

CA20NZ 1
-69POI



INQUIRY RE
PROVINCIAL JUDGE
LUCIEN COE KURATA

Commissioner

THE HONOURABLE MR. JUSTICE DONALD A. KEITH

CA 20 NZ 1
-69 P01



INQUIRY RE
PROVINCIAL JUDGE
LUCIEN COE KURATA

Commissioner

THE HONOURABLE MR. JUSTICE DONALD A. KEITH

1969

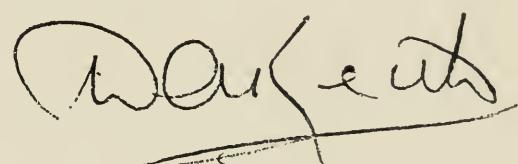


To His Honour,
The Lieutenant Governor of Ontario.

May It Please Your Honour,

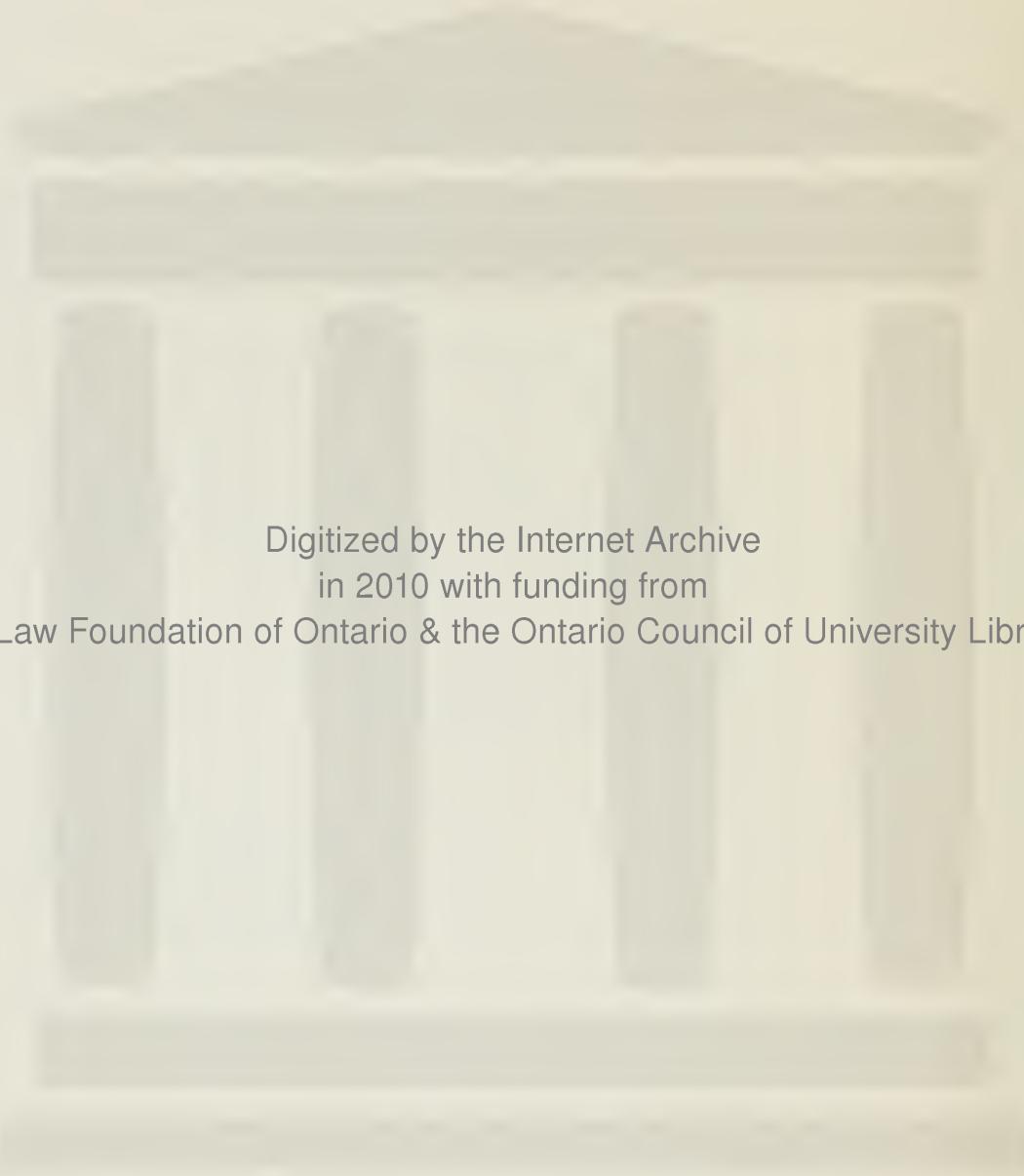
I, the undersigned, Donald Allayne Keith, one of Her Majesty's Justices of the Supreme Court of Ontario, appointed Her Majesty's Commissioner, by Letters Patent Recorded the 19th. day of February 1969, pursuant to Order-in-Council OC-665/69 under the provisions of The Provincial Courts Act 1968 (Statutes of Ontario 1968, Chapter 103) to inquire into and report upon the circumstances relating to the behaviour or misbehaviour of Provincial Judge Lucien Coe Kurata and respecting his ability or inability to perform his duties properly including an alleged attempt by the said judge to commit suicide on September 1st. 1968 and an alleged incident involving the said judge with policewoman Marlene Watson;

Beg to Submit to your Honour
The Following Report.



Commissioner

April 24th. 1969.



Digitized by the Internet Archive
in 2010 with funding from

The Law Foundation of Ontario & the Ontario Council of University Libraries

W. M. Woodcock

[Great Seal]



PROVINCE OF ONTARIO

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO THE HONOURABLE DONALD A. KEITH, One of Her Majesty's Justices of the Supreme Court of Ontario.

WHEREAS by an Act to provide for Provincial Courts and Judges which by Our Royal Proclamation did come into force on the second day of December, A.D. 1968, it is enacted that for the purpose of making an enquiry under sub-section 1 of section 4 thereof, Our Lieutenant Governor in Council may appoint one or more judges of Our Supreme Court of Ontario who shall make the enquiry and report thereon and a judge so appointed has all the powers that may be conferred upon a commissioner under The Public Inquiries Act;

AND WHEREAS Our Lieutenant Governor in Council of Our Province of Ontario deems it expedient to cause enquiry to be made concerning the matters hereinafter mentioned:

NOW KNOW YE that We, having and reposing full trust and confidence in you the said Donald A. Keith DO HEREBY APPOINT you to be Our Commissioner,

to inquire into and report upon the circumstances relating to the behaviour or misbehaviour of Provincial Judge Lucien Coe Kurata and respecting his ability or inability to perform his duties properly including an alleged attempt by the said judge to commit suicide on September 1st, 1968 and an alleged incident involving the said judge with policewoman Marlene Watson,

AND WE DO HEREBY CONFER on you, Our said Commissioner, the power to summon any person and require him to give evidence on oath and to produce such documents and things as you Our said Commissioner deem requisite for the full investigation of the matters into which you are appointed to examine;

AND WE DO HEREBY FURTHER ORDER that all Our Departments, Boards, Commissions, Agencies and Committees shall assist you, Our said Commissioner, to the fullest extent in order that you may carry out your duties and functions and you shall have the authority to engage such counsel, investigators and other staff as you deem proper at rates of remuneration and reimbursement to be approved by the Treasury Board of Our Province of Ontario;

TO HAVE, HOLD AND ENJOY the said office and authority of Commissioner for and during the pleasure of Our Lieutenant Governor in Council for Our Province of Ontario.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Our Province of Ontario to be hereunto affixed.

WITNESS:

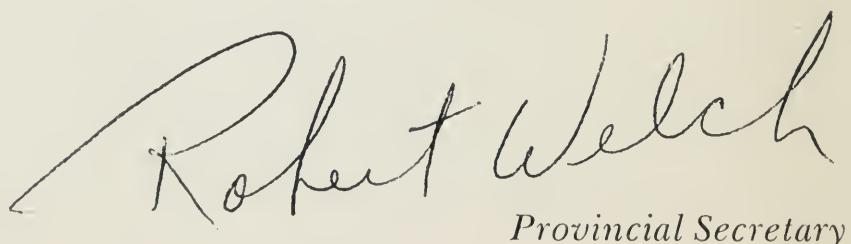
THE HONOURABLE WILLIAM ROSS MACDONALD,
A Member of Our Privy Council of Canada,
Upon whom has been conferred Our Canadian Forces
Decoration,

A Colonel in Our Canadian Armed Forces Supplementary
Reserve and One of Our Counsel learned in the Law,
Doctor of Laws,

LIEUTENANT GOVERNOR OF OUR PROVINCE OF
ONTARIO.

at Our City of Toronto in Our said Province, this sixth day of February in the year of Our Lord one thousand nine hundred and sixty-nine and in the eighteenth year of Our Reign.

BY COMMAND



Robert Welch
Provincial Secretary

Copy of an Order-in-Council approved by His Honour the Lieutenant Governor, dated the 13th day of February, A.D. 1969.

The Committee of Council have had under consideration the report of the Honourable the Minister of Justice and Attorney General, dated February 11th, 1969, wherein he states that,

WHEREAS pursuant to the provisions of subsection 3 of section 8 of The Provincial Courts Act, 1968, Chapter 103, the Judicial Council for Provincial Judges on the 24th day of January 1969 recommended to the Lieutenant Governor in Council that an inquiry be held with respect to Provincial Judge Lucien Coe Kurata,

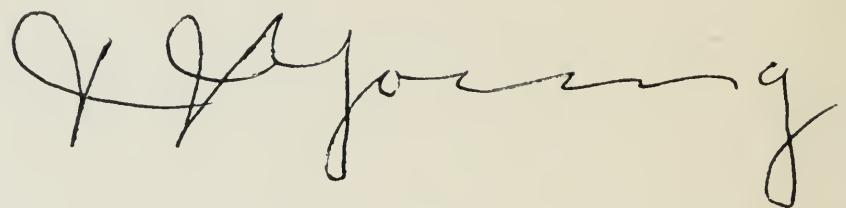
The Honourable the Minister of Justice and Attorney General therefore recommends that pursuant to the provisions of subsection 2 of section 4 of the said Act a Commission be issued appointing the Honourable Donald A. Keith, one of Her Majesty's Justices of the Supreme Court of Ontario, a Commissioner to inquire into and report upon the circumstances relating to the behaviour or misbehaviour of the said provincial judge and respecting his ability or inability to perform his duties properly including an alleged attempt by the said judge to commit suicide on September 1st, 1968 and an alleged incident involving the said judge with policewoman Marlene Watson,

The Honourable the Minister of Justice and Attorney General further recommends that the Honourable Donald A. Keith shall have the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as he deems requisite for the full examination of the matters into which he is appointed to examine.

And the Honourable the Minister of Justice and Attorney General further recommends that all Government Departments, Boards, Agencies and Committees shall assist the Honourable Donald A. Keith to the fullest extent in order that he may carry out his duties and functions, and that he shall have authority to engage such counsel, investigators and other staff as he deems proper at rates of remuneration and reimbursement to be approved by the Treasury Board.

The Committee of Council concur in the recommendations of the Honourable the Minister of Justice and Attorney General and advise that the same be acted on.

Certified,

A handwritten signature in black ink, appearing to read "J. H. Young".

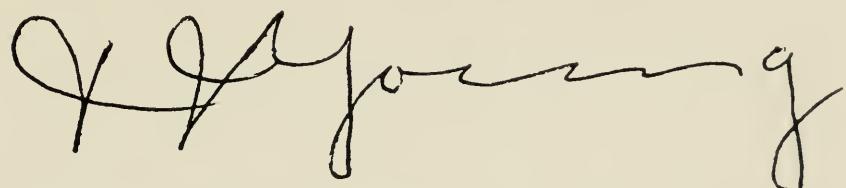
Clerk, Executive Council

PROVINCE OF ONTARIO }
To Wit }

TO ALL TO WHOM THESE PRESENTS MAY COME BE
SEEN OR KNOWN

I, Jack Jamieson Young, Clerk of the Executive Council of Ontario, do hereby certify that the paper writing hereto annexed is a true copy of an Order made upon the 13th day of February, A.D. 1969, by His Honour the Honourable WILLIAM ROSS MACDONALD, P.C., C.D., Q.C., LL.D., Lieutenant Governor of the Province of Ontario in Council, and that the Order herein referred to is on file in the Office of the Clerk of the Executive Council of Ontario.

Dated the 14th day of February, A.D. 1969.



Clerk, Executive Council of Ontario

TO THE HONOURABLE
WILLIAM ROSS MACDONALD, P.C., C.D., Q.C., LL.D.,
Lieutenant Governor of the Province of Ontario

REPORT of a Committee of the Executive Council on
Matters referred to their consideration.

PRESENT:

The Honourable Mr. Dymond *in the Chair*

| | |
|-----------------|--------------|
| Mr. Robarts | Mr. Wishart |
| Mr. Connell | Mr. Gomme |
| Mr. Yaremko | Mr. Brunelle |
| Mr. Grossman | Mr. Bales |
| Mr. Stewart | Mr. Welch |
| Mr. MacNaughton | Mr. Wells |
| Mr. Haskett | Mr. McKeough |
| Mr. Davis | Mr. Guindon |
| Mr. Simonett | Mr. Lawrence |
| Mr. Randall | Mr. White |

ON MATTERS OF STATE

May it Please your Honour

The Committee of Council have had under consideration the report of the Honourable the Minister of Justice and Attorney General, dated February 11th, 1969, wherein he states that,

WHEREAS pursuant to the provisions of subsection 3 of section 8 of The Provincial Courts Act, 1968, Chapter 103, the Judicial Council for Provincial Judges on the 24th day of January 1969 recommended to the Lieutenant Governor in Council that an inquiry be held with respect to Provincial Judge Lucien Coe Kurata,

The Honourable the Minister of Justice and Attorney General therefore recommends that pursuant to the provisions of subsection 2 of section 4 of the said Act a Commission be issued appointing the Honourable Donald A. Keith, one of Her Majesty's Justices of the Supreme Court of Ontario, a Commissioner to

inquire into and report upon the circumstances relating to the behaviour or misbehaviour of the said provincial judge and respecting his ability or inability to perform his duties properly including an alleged attempt by the said judge to commit suicide on September 1st, 1968 and an alleged incident involving the said judge with policewoman Marlene Watson,

The Honourable the Minister of Justice and Attorney General further recommends that the Honourable Donald A. Keith shall have the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as he deems requisite for the full examination of the matters into which he is appointed to examine.

And the Honourable the Minister of Justice and Attorney General further recommends that all Government Departments, Boards, Agencies and Committees shall assist the Honourable Donald A. Keith to the fullest extent in order that he may carry out his duties and functions, and that he shall have authority to engage such counsel, investigators and other staff as he deems proper at rates of remuneration and reimbursement to be approved by the Treasury Board.

The Committee of Council concur in the recommendations of the Honourable the Minister of Justice and Attorney General and advise that the same be acted on.

13th February, 1969

Respectfully submitted,

J. J. YOUNG
C.E.C.

M. B. DYMOND
Chairman

OC-665/69

I hereby certify that the above is a true copy of an Order made upon the 13th day of February, A.D. 1969 by His Honour the Honourable William Ross Macdonald, P.C., C.D., Q.C., LL.D., Lieutenant Governor of the Province of Ontario in Council.



Clerk, Executive Council of Ontario

TABLE OF CONTENTS

| | PAGE |
|--|------|
| Letter Patent—Appointing Commissioner | v |
| Order in Council—Recommending Inquiry | vii |
| Report of Committee of The Executive Council | ix |
| Report of Commissioner | |
| Prefatory Discussion as to Commissions of Inquiry and Standard of Proof | 1 |
| The Incident of September 1st. 1968—Alleged Attempted Suicide | 9 |
| Evidence of Judge Kurata | 10 |
| Evidence of Mrs. M. F. Kurata | 19 |
| Evidence of Joseph Lucien Anthony Kurata | 23 |
| Evidence of Dr. E. L. D. Morgan | 26 |
| Evidence of Mrs. M. C. Morgan | 28 |
| Evidence of Mrs. Mary Ferguson | 29 |
| Evidence of P.C. Wm. Burrows | 33 |
| Evidence of H. W. Nachuk | 34 |
| Evidence of B. S. Lyons | 34 |
| Evidence of Barbara O'Neill | 35 |
| Evidence of Elaine Murray (Sister Mary Janet) | 35 |
| Evidence of Dr. H. L. A. Lickley | 35 |
| Evidence of Dr. David O. Levy | 36 |
| Evidence of Dr. Veronica Halmos | 36 |
| Evidence of Dr. W. P. Kyne | 37 |
| Ruling with respect to admissibility of hospital records and privilege claimed by psychiatrist | 43 |
| Conclusions on the Evidence as to Attempted Suicide | 51 |
| The Alleged Incident of November 1st. 1968 involving Kathleen Lonsberry | |
| Evidence of Kathleen Lonsberry | 53 |
| Evidence of Detective Rennie | 68 |
| Evidence of Detective Renn | 68 |
| Evidence of Judge Kurata | 68 |
| Evidence of Bernard Cugelman | 70 |

| | PAGE |
|---|------|
| The Alleged Incident of November 15th, 1968 involving Policewoman Marlene Watson | |
| Evidence of P.W. Marlene Watson | 73 |
| Evidence of P.C. Moclair | 95 |
| Evidence of P.W. Barron | 102 |
| Evidence of Judge Kurata | 105 |
| Conclusions on the Evidence with Respect to the Allega- tions as to the events of the 1st. November 1968, and as to the events of the 15th. November 1968 | 124 |
| Finding | 137 |
| Appendix A—Staff of Commission and Appearances | 138 |
| Appendix B—Hearings | 138 |
| Appendix C—List of Witnesses | 138 |
| Appendix D—List of Exhibits | 139 |

REPORT OF COMMISSIONER

The inquiry that I have had to conduct is the first under the Provincial Courts Act, 1968. This Act has to do with judicial officers who were at one time known as police magistrates and are now put into a distinctly different sphere. Their appointment is subject to the approval of the Judicial Council on the request of the Minister of Justice for this Province and ever since the coming into force of this Act all proposed appointments to this judicial office have been referred to the Judicial Council for consideration and report. The Judicial Council consists of

The Chief Justice of Ontario
The Chief Justice of the High Court
The Chief Judge of the Provincial Courts (Criminal Division)
The Chief Judge of the Provincial Courts (Family Division)
and
The Treasurer of the Law Society of Upper Canada.

One or two other persons may be added to the Judicial Council by appointment authorized by the Lieutenant Governor in Council.

It is obvious that this statute was enacted by the Legislature of Ontario to enhance the prestige of the Courts of this Province which deal with the vast bulk of the cases involving persons, and breaches of either the Criminal Code or other prohibited acts.

The dignity of our Magistrates has now been enhanced by the designation of Provincial Judge—instead of being addressed as “Your Worship,” they are now accorded the dignity of “Your Honour.” Their salaries have been substantially increased. The motives behind these changes can only be applauded.

In former times some of those holding a magisterial office (now designated Provincial Judge) could be removed at the pleasure of the Lieutenant Governor in Council.

The elevation in status, to which I have referred, has brought about a corresponding improvement in security of tenure. Pursuant to section 8 of the Provincial Courts Act, one of the functions of the Judicial Council is to receive complaints respecting the misbehaviour or neglect of duty by Provincial Judges or the inability of such Judges to perform their duties, and to hold inquiries in respect thereof. Such inquiries by that section of the statute must

be private, and upon the holding of such an inquiry the Judicial Council may recommend to the Lieutenant Governor in Council that a public inquiry be held under section 4 of the statute. Section 4 of the Provincial Courts Act, 1968, provides that a Provincial Judge may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if the circumstances respecting the misbehaviour are first inquired into and the Provincial Judge is given reasonable notice of the time and place for the inquiry and is afforded an opportunity for himself or his counsel of being heard, of cross-examining the witnesses and of producing evidence on his own behalf.

This section of the Provincial Courts Act, 1968, provides that such an inquiry must be conducted by one or more Judges of the Supreme Court of Ontario appointed by the Lieutenant Governor in Council who shall report thereon to the Lieutenant Governor in Council. It is further provided that an Order removing a Judge from office under this section may be made by the Lieutenant Governor in Council and the Order and the report of the inquiry is required to be laid before the Legislative Assembly within 15 days of its receipt if it is in session, or if not, then 15 days after the commencement of the next ensuing session.

This section is very similar to section 3 of the Magistrates Act, R.S.O. 1960, Chapter 226, now repealed by the Provincial Courts Act, 1968. It is the private inquiry by the Judicial Council that adds greatly to the protection of Provincial Judges because now no public inquiry can be held unless recommended by the Judicial Council.

It is obvious from the foregoing that if the Lieutenant Governor in Council is prepared to act upon the report of a Judge of the Supreme Court of Ontario appointed under section 4 of the Act, the Provincial Judge into whose conduct an inquiry has been held may be forthwith removed by the Lieutenant Governor in Council and all that is thereafter required is that the Lieutenant Governor in Council shall submit a copy of that Order and the report to the Legislative Assembly.

It is in this context that I have been commissioned to inquire into and report on the conduct of Provincial Judge Lucien Coe Kurata. I determined at the outset, having regard to the fact that certain specific allegations had been made against the said Provincial Judge and inquired into by the Judicial Council, that the

inquiry should be conducted as near as possible in the atmosphere of a trial in the Supreme Court of Ontario.

Arrangements were therefore made for the use of one of the principal courtrooms in the Metropolitan Court House, for the appointment of a commission counsel and assistant commission counsel, for the services of the court reporters to the Supreme Court of Ontario for daily copy and above all for the furnishing to counsel for the Provincial Judge of a synopsis of all evidence that commission counsel proposed to introduce into evidence of conduct upon which the Commissioner so appointed might reasonably find that the behaviour of the Provincial Judge was such that he ought to be removed from office. All of these instructions and arrangements were meticulously carried out. It will be realized that the inquiry by the Judicial Council which was a necessary prerequisite to the recommendation that a public inquiry be held involved the attendance of the Provincial Judge and his counsel and the hearing of all evidence that was then available to the Judicial Council or which could have been adduced on behalf of the Provincial Judge himself. The evidence with respect to the complaints was led by Frank W. Callaghan, Q.C., Senior Crown Counsel for the Province of Ontario. The evidence on behalf of the Provincial Judge, who testified himself, was led by one of his counsel on this inquiry, Arthur Maloney, Q.C. These facts which must be part of the public record are mentioned to assure Provincial Judges and the public, if such assurance might be thought by any one to be necessary, that the inquiry by the Judicial Council was no court of "Star Chamber" but decidedly proper proceedings conducted in accordance with those standards of fair play which ought to be assumed but sometimes are not.

It is under these circumstances that I find myself designated by Letters Patent, issued in the name of Her Majesty, by the Lieutenant Governor, a Commissioner

"to inquire into and report upon the circumstances relating to the behaviour or misbehaviour of Provincial Judge Lucien Coe Kurata and respecting his ability or inability to perform his duties properly including an alleged attempt by the said judge to commit suicide on September 1st, 1968 and an alleged incident involving the said judge with policewoman Marlene Watson."

I address myself at once then to the question of the standard of conduct which is required of a Provincial Judge and the standard of proof that is relevant to a decision as to whether or not

the behaviour or misbehaviour of the Provincial Judge warrants his exoneration and retention in office or his immediate dismissal.

It was urged upon me in the most strenuous terms by counsel for Judge Kurata that the judge must be put in the same position as a private citizen on trial for a criminal offence. This has been this counsel's advice from the date of the first accusation and I cannot possibly think of a more untenable position. A private citizen on trial charged with a criminal offence is not thereby enabled to establish his innocence as was put to me by Mr. Maloney. On the contrary, that is the one thing he is not required to do and cannot effectively do. A private citizen on trial charged with a criminal offence need make no answer at all. The onus is on the Crown as the accuser to prove his guilt beyond a reasonable doubt and reasonable doubt is a phrase that is well understood, being the constant subject of charges to lay juries by every Judge on the Bench who is required to charge a jury. For example, a standard form of charge to a jury in a criminal trial with respect to the presumption of innocence and reasonable doubt goes as follows:—

“In a criminal case the accused is presumed to be innocent until the Crown has proven his guilt beyond a reasonable doubt. The Crown must prove his guilt. It is not for the accused to establish or demonstrate or prove his innocence. If the Crown fails to prove his guilt beyond a reasonable doubt you must acquit the accused. Now what is meant by proof beyond a reasonable doubt? Proof beyond a reasonable doubt in the first place does not mean proof beyond any possible or imaginary doubt, because there is not much if anything that relates to human affairs that is not open to some possible or imaginary doubt. Proof beyond a reasonable doubt has been achieved when you as a juror feel sure of the guilt of the accused. It is that degree of proof which convinces the mind and satisfies the conscience so that you as conscientious jurors feel bound or impelled to act upon it.”

It is a common argument put forward by lawyers acting for accused persons that it is far better that 99 guilty persons go free than that one innocent one should be convicted. Implicit in this argument is that 99 guilty persons go free. A former justice of the Supreme Court of Ontario whose conduct was recently subject to inquiry by the late The Honourable Ivan C. Rand, one of the most distinguished Judges of the Supreme Court of Canada in our lifetime, boasted that in the trial of persons for crimes before him in the Supreme Court of Ontario, a jury having given effect to the standard of proof required as between private citizens, he used

to admonish the fortunate person who had just been acquitted by that jury with these words:

“You are lucky, the Crown has not succeeded in proving this case although there is much to it.”

(Report of the Honourable I. C. Rand in the Inquiry re the Honourable L. A. Landreville (1966) p. 94.)

Acquittal on a criminal charge is no proof of innocence. It merely saves the accused from punishment according to law but leaves the issue of his innocence open to very great doubt. For example, in the case of the Honourable L. A. Landreville it will be recalled that prosecutions were launched in the criminal courts on the instructions of the Attorney General against the mayors of four municipalities, namely, Sudbury, Orillia, Gravenhurst and Bracebridge with respect to the same transaction involving the Honourable L. A. Landreville for N.O.N.G. stock which, it was alleged had been corruptly bargained for by these municipal officers, one of whom was in fact the Honourable L. A. Landreville. In three cases the information was dismissed on the ground of insufficient evidence to justify committing the accused to trial. In the fourth, that of the Orillia mayor, the accused was acquitted in a County Court jury trial. The Attorney General then issued a public statement that in the circumstances no bill of indictment would be preferred by him before a grand jury in any of the three cases of dismissal.

Nevertheless the Benchers of the Law Society saw fit to deplore the continuance of this individual, the former Mayor of Sudbury, as one of Her Majesty’s Judges of the Supreme Court of Ontario and on the subsequent commission of inquiry conducted by the late The Honourable I. C. Rand, above mentioned, the individual concerned was expressly found to be unfit, by reason of his conduct, to continue in office, notwithstanding that no criminal offence could be proven against him.

In this connection The Honourable Mr. Rand said in his conclusions at p. 107 of his report as follows:

“The stock transaction . . . , for which no valid consideration was given, notwithstanding the result of the preliminary inquiry into charges laid against Justice Landreville, justifiably gives rise to grave suspicion of impropriety. In that situation it is the opinion of the undersigned that it was obligatory on Justice Landreville to remove that suspicion and satisfactorily to establish his innocence, which he has not done.”

In carrying out this Commission, I do not sit as a Court, I have no power to punish, I can only listen to the evidence, weigh and assess it impartially and make my report thereon to the Lieutenant Governor in Council.

In undertaking this task I recall the language of Mignault, J. in whose judgment Anglin C. J. C. and Rinfret, J. concurred in the case of *The London Life Insurance Company v. Trustee of The Property of The Lang Shirt Company, Limited*, [1929] S.C.R. 117 at pp. 125-6:—

“That there is, in the law of evidence, a legal presumption against the imputation of crime, requiring, before crime can be held to be established, proof of a more cogent character than in ordinary cases where no such imputation is made, does not appear to admit of doubt. In criminal cases this rule is often expressed by saying that the crime imputed must be proved to the exclusion of reasonable doubt. There is authority for the proposition that the same presumption of innocence from crime should be applied with equal strictness in civil as well as in criminal cases (Taylor, Evidence, 11th ed., vol. 1, par. 112, and cases referred to). Whether or not, however, the cogency of the presumption is as great in civil matters as in criminal law (a point not necessarily involved here), I would like to adopt the statement of the rule by Middleton J. A., in the court below, which appears entirely sound:—

‘... While the rule is not so strict in civil cases as in criminal, I think that when a right or defence rests upon the suggestion that conduct is criminal or quasi-criminal, the Court should be satisfied not only that the circumstances proved are consistent with the commission of the suggested act, but that the facts are such as to be inconsistent with any other rational conclusion than that the evil act was in fact committed.’ See Alderson, B., in *Rex v. Hodge* (1838) 2 Lewin C.C. 227.”

My task is akin to the task of a Court required to determine in a civil action whether or not a crime has been committed, e.g. forgery, theft, suicide and so on.

The standard of proof in such a situation has been settled in this country by the unanimous judgment (on this point) of the Supreme Court of Canada in *Hanes v. The Wawanesa Mutual Insurance Company*, [1963] S.C.R. 154. The foregoing passage from the *London Life* case was quoted with approval and it was held that while a high degree of proof would be required the Court was still entitled to make its decision on the balance of probabilities.

It may be useful also to quote the language of Denning, L. J. in *Bater v. Bater* [1950] 2 All E.R. 458 at 459 where he said:—

“The difference of opinion which has been evoked about the standard of proof in these cases may well turn out to be more a matter of words than anything else. It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion.”

Now a brief word as to the use of the Royal Commission, in matters of this sort, rather than prosecution, in those cases where a crime may be suspected. Ordinarily there would be no occasion to make any comment on this subject, but Judge Kurata himself, and his counsel, have repeatedly both publicly and privately, demanded that he be charged in the ordinary criminal courts, challenging the propriety of Commission inquiry.

This has most understandably been the subject of public debate. It will not be taken amiss, I am sure, if I point out that up until 1941, magistrates, who of course are appointed by the Provincial Government of the day, held office only during the pleasure of the Lieutenant Governor in Council, i.e., the provincial cabinet.

In 1941 the Magistrates Act was amended to provide that salaried magistrates, after being in office for two years, could only be removed upon the recommendation of a Commissioner after a public inquiry, such Commissioner being required to be himself a Judge of the Supreme Court of Ontario. Even this amendment left many magistrates without such protection and subject to being dismissed at the will of the Provincial Government.

That has been the law of this Province by statute then since 1941, the only real changes in the intervening years being brought about by the Provincial Courts Act 1968.

Those changes as I have already indicated elevate magistrates to the dignity of Provincial Judges, charge the newly created Judicial Council with the task of reporting upon all proposed new appointments, and of hearing privately all complaints against any Provincial Judge in the first instance.

A public inquiry is only held if the Judicial Council has so recommended following the private inquiry. This procedure is obviously designed to eliminate frivolous or groundless complaints which might otherwise undermine the position and authority of a Provincial Judge.

I might also refer to Clokie and Robinson, "Royal Commissions of Inquiry, 1937", where in dealing with this rather unique form of inquiry, common to British jurisdictions, the authors say at p. 8:—

"Royal Commissions have continually been appointed for the purpose of making investigation into the administration of the law. The Royal Commission procedure is so flexible and convenient that occasionally, in the face of insistent demand, the Government finds itself forced to provide, in addition to the usual parliamentary controls, a further method of inquiry into its own conduct or into that of its subordinate officials."

As illustrations of how widely and usefully employed, such Commissions of Inquiry have been, one will only need to recall the inquiry conducted by Lord Denning into important matters of conduct by Cabinet Ministers and Senior Officials of the British Government arising out of the Profumo affair; the inquiry conducted by the Honourable Mr. Justice Spence of the Supreme Court of Canada into the conduct of Cabinet Ministers, the R.C.M.P. and Senior Officials arising out of the Sevigny-Munsinger affair; the inquiry already referred to conducted by the late The Honourable Ivan C. Rand into the conduct of the Honourable L. A. Landreville and the inquiry conducted very recently by the Honourable Mr. Justice Campbell Grant of the Supreme Court of Ontario into the conduct of Magistrates Gardhouse and Bannon.

It is a decidedly unpleasant and difficult task that Commissioners must carry out in such circumstances but as our law stands and has stood for many years, it must be done on those occasions, fortunately rare, when misconduct is alleged against persons holding the position of Provincial Judges.

Turning now to the terms of reference directed to me by the Letters Patent, already quoted, I must point out that they are in the broadest terms following the language of the statute itself,

namely, "to inquire into and report upon the circumstances relating to the behaviour or misbehaviour of Provincial Judge Lucien Coe Kurata and respecting his ability or inability to perform his duties properly." My attention is specifically directed to "an alleged attempt by the said judge to commit suicide on September 1st, 1968 and an alleged incident involving the said judge with policewoman Marlene Watson."

It is abundantly clear, however, that if additional matters are brought to my attention relevant to the behaviour or misbehaviour of the said Provincial Judge or respecting his ability or inability to perform his duties properly, I am not only not precluded from inquiring into such matters, but it is my bounden duty to do so and report upon them.

In the result therefore there were three specific complaints respecting Judge Kurata brought to my attention and with respect to which sworn testimony was given both in chief and in searching cross-examination. These events all are alleged to have occurred within the short space of 76 days commencing on the 1st September 1968 and ending on the 15th November 1968.

I propose to deal with them in chronological order examining the evidence with respect to each in turn.

The Incident of September 1st. 1968

The following 15 witnesses gave evidence with respect to this matter, commonly referred to as an alleged attempted suicide by Provincial Judge Kurata;

- (a) Provincial Judge Kurata
- (b) (Mrs.) Mary Frances Kurata
- (c) Joseph Lucien Anthony Kurata
- (d) Dr. E. L. D. Morgan
- (e) (Mrs.) Muriel Caroline Morgan
- (f) (Mrs.) Mary Ferguson
- (g) P.C. William Burrows
- (h) Henry Wallace Nachuk
- (i) Brian Stephen Lyons
- (j) Barbara O'Neill
- (k) Elaine Murray (Sister Mary Janet)
- (l) Dr. Hazel Lavina Agnes Lickley
- (m) Dr. David O'Brien Levy
- (n) Dr. Veronica Halmos
- (o) Dr. William Peter Kyne

Evidence of Judge Kurata

Judge Kurata states that he was born at Toronto, the 19th June 1922, graduated in Metallurgical Engineering from the University of Toronto in 1945, in law from Osgoode Hall Law School in 1948, when he was called to the Bar of Ontario and commenced to practice his legal profession. He did so until the 1st. May 1966 when he was appointed a magistrate. He held public office as Reeve of Swansea from 1962 until his appointment as magistrate. He is married and has three children, two of whom, Lucien Jr. now aged 18 and Christina aged 13, live at home, the elder daughter Elizabeth aged 20 having taken her own apartment in August 1968. The removal of the older daughter to her own apartment which occurred on August 12th. 1968 created some serious problems apart from the parents understandable regret that she, Elizabeth, wanted to live away from the family home. Apparently the 13 year old Christina wanted to move out also and live with her older sister and this caused Judge and Mrs. Kurata great concern. He says the problem with Christina was of sufficient seriousness to affect his sleep. Normally he was a sound sleeper but 'I found I was having difficulty sleeping and I would sleep and it would be fitful.'

I should mention that Judge Kurata, while short in stature, is of a very robust build and gives the appearance of having considerable physical strength.

September 1st. 1968 was a Sunday, the day preceding a general holiday in Ontario, Labour Day, Monday, September 2nd. 1968, a day on which Judge Kurata would be free of judicial duties.

He was asked by his counsel Mr. Ecclestone, Q.C. to describe briefly the events of the day.

The following is quoted from his evidence:—

(p. 446 line 2 to p. 448 line 7).

"Q. Let us get down to Sunday, September 1st, then. Could you describe briefly the events of that day, what time you got up, what you did during the day—

A. Well, it would really be a guess because—

Q. Were you in Toronto? A. We were in Toronto.

Q. At your home? A. At 27 Grenadier Heights.

Q. All right. A. My recollection would be that we got up around 9 o'clock—normally we got to church but because of the situation, I think, we sat there after breakfast, you know, discussing just what could be—

Q. Talking about the situation, I gather, concerning your daughter? A. Yes, that is correct.

Q. What about sleeping the previous night, the Saturday? A. Very, very fitful, didn't have a great deal of sleep?

Q. All right. You rose around 9 o'clock and you were discussing the situation with your wife in the morning? A. That is correct.

Q. All right. What happened from that point on? A. I would think around noon, my son came in and asked for permission to go—I think it would be to the Runnymede or Jane subway station, to meet a friend who was coming over. He wanted to take the car.

Q. That is Mr. Dunn? A. That is Mr. Angus Dunn.

Q. And he is a friend of your son? A. That is correct. And I gave him permission for this.

Q. They subsequently returned to the house? A. They returned to the house.

Q. All right. A. And—

Q. What were you sort of doing generally during the day? A. I think the weather was warm. I recall I had a pair of brown trousers and a sports shirt on, and when they came they were going to work on their motorcycle together. I think I went out and watched them work on the motorcycle, and they went and played football on the street and I went out and played football with them.

Q. Would this be in the afternoon? A. This would be in the afternoon. Some time, I would think, about 1.30.

Q. And how long did you play football with the boys? A. My recollection would half an hour to forty-five minutes.

Q. And what were your spirits, emotional condition at this point? A. Well, I was, you know, interested in, in throwing the football and generally playing with the boys.

Q. I see. All right. Well then, we have heard evidence that at one point you put in a call to Dr. Morgan's home. A. That is correct.

Q. Do you remember whether you made one or two phone calls? A. Well, I recall that Mrs. Morgan said that I made two, but I can only recall one call, at 4.30.

Q. I see. In any event, what was the purpose of your call? A. I wished to get the sleeping tablets for myself and the tranquilizers for my wife.

Q. Why did you want sleeping tablets? A. Well, I think—really I am not, normally don't take medication. I think it was at the suggestion of my wife. She had, she had had these, this type of sleeping pill prescribed for her and she found it was very helpful

and she asked me, she thought, recommended to me if I could speak to Dr. Morgan and have the same type of prescription for myself, that it would be helpful.

Q. Helpful in doing what? **A.** Sleeping, sleeping and relaxing.

Q. All right. And did you speak directly to Dr. Morgan or to someone else? **A.** I'm, I'm—my recollection is that I spoke to Mrs. Morgan.

I'm, I'm aware of the fact that he wasn't there, I understood that he was in his, on his boat.

Q. All right. And you had some conversation with her? **A.** Right.

Q. All right. Well then, what happened subsequent to that? **A.** Well, I think my wife and I, we went to the upstairs bedroom and again we sat up there just discussing what, what we could do with this situation between Christina and Elizabeth—

Q. Right— **A.** And—

Q. Did you see the boys during the afternoon, after you played football, at any other times? **A.** Well, to the best of my recollection the phone call that I recall to Dr. Morgan's residence was made about 4.30, and at that time I believe I saw Lucien, he came in for a drink of water. This would be a recollection.

Q. All right. And subsequently was anything delivered to the house? **A.** Well, shortly after the phone call, two cardboard cartons came to the house, to the front door. I answered the door and Kathy Morgan handed me these two—

Q. That is the Morgan daughter of course— **A.** —cartons—that is correct."

(p. 449 line 29 to p. 451 line 42)

Q. All right. Well then, the Morgan daughter brought this to the house. Did you answer the door? **A.** I answered the front door.

Q. Can you pinpoint the time any closer than what you have? **A.** Well, my recollection is that I phoned around 4.30 and I would think that it would be 5, 5.15, somewhere in that neighbourhood that she came to the, knocked on the door.

Q. All right. What's the next thing that happened of any significance in this matter? **A.** Well, I recall taking the, these two cartons upstairs and putting them on the headboard of the bed—that has got bookcases on either side of the headboard—and we chatted a while, and the next recollection is—

Q. 'We', I presume this is your wife? **A.** My wife and I were up in the bedroom discussing—I can't recall, but I think the main subject would have been this difficulty with Elizabeth and Christina—

Q. All right— A. —and I know that we didn't have any lunch, it was a rather, you know, disturbed day in the sense that we were concerned, and some time around six I decided that I would take the, the, the Seconal pills.

Q. All right— A. —and there was nothing on it to indicate how many you should take, and they are very small—they are like, my recollection is that they are about the size of the pinhead on a map pin—so I felt I could take two of those quite safely. I did, and I recall my wife, I knew that she took four of these tranquilizers on, a day, and I, whether I asked her or whether it was implied, you know, I know I took two out of the other carton because I thought, you know, if I took the two I would be able to get at least a good night's sleep. I was upset and I wasn't too keen on eating, it was a warm day, and then, and then taking the Bols, which, my recollection is that this is, there's four compartments in it and there is apricot brandy, cherry brandy and creme de menthe, and I think it has some liqueur with cocoa in it—

Q. Creme de cacao? A. That would be it. Q. Was there any other type of liquor bottle in the house at all. A. There was no other type of liquor bottle at all in the house.

THE COMMISSIONER: Then what did you do? You did not get quite to that. You said you had this four-compartment bottle— A. That is correct, my Lord.

Q. What did you do with it? A. I opened, opened, took the glass top off the, which my recollection is it was the cherry brandy. I just proceeded to take, having taken the pills, I took two, I would think two or three ounces out of the—

MR. ECCLESTONE: What was your purpose in doing that? A. Well, from the, from the researches that I did when I was in law, I know there was synergism between alcohol and the other narcotics that would make the reaction quicker.

THE COMMISSIONER: How did you take it, Judge Kurata? A. I didn't even use a glass, I just got—it is a type of bottle, if you take the top off it is possible just to—

Q. This is one thing I would like to be quite clear on. You mentioned a glass stopper—as I recall that expensive bottle of four-compartment Bols, it has four glass— A. That is correct—

Q. —and each of them is curved— A. That is correct—

Q. —and approximately an inch in length above the top of the bottle— A. That I would think is correct.

Q. And you say you did not use a glass, so that you had three glass things sticking up the top? A. Right.

Q. How did you manage that? A. I just went like this (indicates).

THE COMMISSIONER: Thank you. All right.

MR. ECCLESTONE: Q. All right. Well then, you indicated there is no other liquor bottles in the house— A. There was no other, there was no other liquor bottles in the house whatsoever.

Q. Do you recall Constable Burrows' testimony that he saw a brandy bottle—he doesn't think it was the type of bottle you have described now. Any such bottle in the house? A. No such bottle.

Q. How long had you had this Bols liquor bottle—

THE COMMISSIONER: I don't want to leave that at the moment because it is very important.

He also said that it was empty, that the ordinary liquor bottle that he saw was empty, that there was nothing in it, in addition to saying it wasn't a Bols bottle.

MR. ECCLESTONE: Right.

Q. Any empty liquor bottles in the house? A. There were no empty liquor bottles or full liquor bottles, and I do not ever recall seeing any liquor bottle he was, heard described at any event."

(p. 453 line 3 to p. 456 line 5).

"Well then, the day in question, Sunday, September 1st, you mentioned where this bottle of Bols liqueur is ordinarily kept. How did it end up in your bedroom? A. Well, I am a partial diabetic and my wife was concerned when she saw me take this—

Q. Where did you get it from? A. Went down to the kitchen and—

Q. Brought it up? A. Brought it up.

Q. What is your next—what happened next, then? You took two Seconal and two tranquillizers and two or three ounces of the liquor? A. That is right. Well, the reaction was very fast. I would think it would be a matter of seconds, and this is all that I can recall.

Q. Do you remember anything—you started to say something about your wife and the liquor bottle? A. Well, I think, my recollection is that she knocked it out of my hand, it fell on the floor, and before anything had come out, I picked it up and put it back on to the desk that is in the bedroom and put the stopper—

Q. That is after you had consumed something from the bottle? A. That is correct. And after the, that is the last that I can recall.

Q. And until, I suppose, you woke up in the hospital? A. That is right. I recall waking up about 6.30 Monday morning in the Intensive Care Unit, and the patient next to me—I recall an oxygen tent being put around the bed next to me some time earlier than that—there is just sort of semi-consciousness. I couldn't

at that time recall whether it was male or female, but I know by 6.30 he had passed away, and family were in beside the bed—

Q. Do you have any recollection of taking any other pills other than the two Seconal and the two tranquillizers? A. I have no recollection of taking any other pills.

Q. *What was your intention in taking these pills and the brandy?* A. Well, as I said, to get a good night's rest.

Q. And you hadn't had any supper? A. No supper."

Judge Kurata's attention was then directed to Exhibit 2B, which is headed (printed) St. Joseph's Hospital, Toronto, Ontario, History and Progress, and is a standard form. Thereafter the document which is the size of a full legal letter page is entirely in the handwriting of Dr. W. P. Kyne, the staff psychiatrist at the hospital and is signed by him. In Dr. Kyne's handwriting it starts out—3 September 1968—reference to Lucien Kurata and I will be dealing with this report in considerable detail later. Judge Kurata's attention is, however, directed to the following extract in, as I have said, Dr. Kyne's own handwriting,—“Says he and wife plan a mutual suicide pact and wife did not go along; that he took wife's tranquillizers.” What does Judge Kurata say about this? I quote his evidence from page 456 line 6 to page 457 line 21:—

“Q. All right. Well, then, we have heard that in the hospital you subsequently were seen by Dr. Kyne on September the 3rd, that would be the Tuesday? A. Tuesday, that is correct.

Q. And that apparently was in the morning? A. That is correct.

Q. And did he come to see you or did you go to see him? A. No, I was not out of the intensive care unit.

Q. Can you remember—any recollection of a conversation you had with him, any specific conversations or—? A. Well, I recall the first day he came in and asked me how I was feeling, and I think—well, I'm positive my reply is exactly as he has given in evidence, that I felt fine, but I did want another day.

Q. He said also that he saw you briefly on September 4th, the day you were discharged? A. That is correct.

Q. All right. Was there any discussion between you and the doctor as to what had happened, to the best of your recollection? A. I can recall Dr. Kyne taking a history, the date of birth and the place of birth. Now, I couldn't recall which day it would be. You see, it's difficult for me to place—

Q. I am trying to be a little more specific. When I say what happened, September 1st—you had some discussions about that, what happened September 1st? A. I have no recollection of any discussion with him about that at all.

THE COMMISSIONER: About what?

MR. ECCLESTONE: No recollection about any discussion with him about that at all.

Q. Did you at any time indicate to the—

MR. FORD: I am sorry, there was a question I hadn't heard, my Lord.

THE COMMISSIONER: I think I heard Mr. Ecclestone answer—give you the answer that the witness had given to the question to the effect: Was there any discussion between Judge Kurata and Dr. Kyne as to the events of September 1st, and I understood the Judge to say, and I heard Mr. Ecclestone repeat to you that he recalls no discussion of those incidents at all.

MR. FORD: Thank you.

THE WITNESS: I wish to say this, though. It is quite clear from the evidence that I have heard that I did not understand what he was asking me because the date of birth and my age were incorrect.

MR. ECCLESTONE: Q. *Well, did you at any time tell him or any other person that there was a suicide pact between you and your wife, and that your wife didn't go along with it?* A. No, this is absolutely—I don't know where it came from; it did not come from me.

Q. *Would that have been true, in any event?* A. *It wouldn't be true in any event.*"

His counsel then asked him questions with respect to what became Exhibit 2E. This again is a formal hospital record entitled St. Joseph's Hospital, Toronto, Consultation Record dated September 3rd. 1968 re Lucien Kurata and signed W. P. Kyne, M.D. Staff Psychiatric Service.

That report reads in part as follows:—

"I interviewed this 45 year old magistrate September 3rd. 1968. He was admitted to the I.C.U. via the Emergency on September 1st. 1968 following an overdose. He alleges that he has domestic problems (wife's recurrent depression, concern over his children, financial problems, change of position to magistrate from a private law practice three years ago.)"

What is his evidence with respect to this report? I quote from page 457 line 22 to page 458 line 38.

"Q. Well, then, there are some other matters referred to in Dr. Kyne's report. For instance, there was some suggestion of financial difficulties. Were these discussed between you and the doctor, that you can remember? A. No.

Q. At that time were you in any financial difficulty? **A.** No, there was no difficulties whatsoever.

Q. Your home at 27 Grenadier, who is it owned by? **A.** At that time it was owned by myself, and is presently jointly owned.

Q. By you and your wife? **A.** My wife.

Q. Any mortgages against it? **A.** There is no mortgages on the property.

Q. We also heard reference to a farm. Who owns the farm? **A.** That is in my name.

Q. And where is it situated? **A.** It's at Dundalk.

Q. Is that near Shelburne? **A.** It's north of Shelburne.

Q. How many acres does it have? **A.** There's a hundred acres.

Q. And any buildings? **A.** There's a house and a 60 by 40 barn.

Q. What sort of house? **A.** It's a frame house.

Q. Any mortgages, any debts against that property? **A.** That property is clear as well.

Q. Do you have any debts of any significance? **A.** I have no debts other than just the small accounts that you accumulate from day to day, for the groceries—

Q. Well, then, how would you describe your financial condition at the time? **A.** Excellent.

Q. Were you concerned in any way about your financial condition? **A.** I wasn't concerned in any way.

Q. There's some reference to your wife's recurrent depression. At that point in August and September of 1968 what was the situation, briefly, as regards your wife? **A.** My wife was in excellent health. She hadn't been well prior to that in '67, but—this is why I was—if anything was said it was absolutely and totally incorrect because it did not fit the situation at that time.

Q. You said she was in good health. You mean physically and mentally? **A.** Physically and mentally she was in the best of health.

Q. Although there had been some problems with that? **A.** That is correct.

Q. Well, was this discussed with the doctor? What recollection do you have of that? **A.** I have no recollection of discussing that at all.

Q. There was some suggestion in the report about the change of position to magistrate from private law practice a few years ago. Do you remember what discussion there was, if any, about that? **A.** That again would be something that referred to the

—if it were said, it is not correct at that time because, you know, when you become—take on the position of a magistrate from practice it's difficult—sentencing is the most difficult facet of the Bench. This is what I have found, and I think in early '67 the sentencing is a problem, but that would be in '67.

Q. Well, then, as of September 1st— A. It would be no problem at all."

In cross-examination the extract quoted above from Exhibit 2B was again put to the witness and he flatly denied telling Dr. Kyne or anyone else that he and his wife had entered into a mutual suicide pact, and further denied that when this most serious allegation, attributed to him in the written report, was drawn to his attention he made any inquiries as to who could possibly be responsible for such a statement. (Evidence p. 514 to p. 517.)

Again in cross-examination he flatly denies making any of the statements which Dr. Kyne records him as making to him in Exhibit 2E either to Dr. Kyne or to anybody else. (Evidence p. 519 to 521.)

Exhibit 2D is St. Joseph's Hospital Official Consultation Record, a document initiated on September 2nd. 1968 by Dr. Halmos who is, and has been since September 1961, the Staff Medical Doctor at St. Joseph's Hospital. As such she was in charge of Judge Kurata's case. When a patient is admitted, suffering from a barbiturate overdose, as Judge Kurata was, it is hospital routine to request the Staff Psychiatrist to examine the patient. Dr. Halmos was by his document requesting Dr. Kyne to see Judge Kurata and report.

Dr. Kyne's short handwritten report in the space provided on this form and signed by him contains the following:—

"This man is unwilling to be specific as to why he attempted suicide."

Dr. Kyne in his evidence (Evidence p. 328) had testified, Judge Kurata being present in the courtroom while he was giving such evidence, that he, himself, had questioned Judge Kurata who had given him various reasons for attempting suicide.

Similarly, Dr. Kyne was questioned about his formal typed psychiatric consultation report (Exhibit 2E) dated September 3rd. 1968 and signed by Dr. Kyne, where it is recorded

"In summary therefore this man does not impress us as being fit for discharge at the present time. We hope for more specific reasons and co-operation as to why he attempted suicide."

Dr. Kyne believed that he had not discussed a suicide pact with Judge Kurata but testified that Judge Kurata had given him various reasons for attempting suicide himself, such as worries over his wife's health, children and financial problems. Judge Kurata's evidence on this point is very short and appears at p. 525 lines 19 to 29 as follows:—

“Q. Witness, we were discussing the reports and notes of Dr. Kyne, the psychiatrist, before the adjournment.

Dr. Kyne tells us that you gave various reasons for attempting suicide. What reasons, if any, did you give him? A. I told you that I didn't give him any, Mr. Ford.

Q. No reasons? So, if he says that you gave him any reasons for attempting suicide, you disagree with that? A. It is incorrect.”

Evidence of (Mrs.) Mary Frances Kurata

Mrs. Kurata's evidence appears in Vol. VII of the evidence at pp. 537 to 558. I will summarize parts and quote other parts directly. She says her husband was upset about the older girl moving out, his sleep had been adversely affected thereby but otherwise there were no worries. Tranquillizers had been prescribed for her by Dr. Morgan, and as of the 1st September 1968 there may have been as much as a quarter of the last prescription still in the house.

She says they got up quite late on the 1st September 1968 and believes they had lunch in the garden. Judge Kurata was tired and upset and she advised him to phone their neighbour and doctor, Dr. Morgan, “to send over something and try and settle your nerves and something to help you sleep for a while. Normally he wouldn't have taken an aspirin.”

She blames herself for suggesting getting pills.

Mrs. Kurata was not present when her husband telephoned the Morgan house but believes the call was made after 12:30 p.m. and knows of no second call.

Her evidence then continues on the vital point as follows and I quote from page 541 line 32 to page 542 line 34; page 545 line 44; page 546 line 22 to page 551 line 1 and page 553 lines 18 to 46.

“Q. Well, then, I think His Lordship would like you to assist us, if possible, as to your recollection as to the time when the pills were brought over to the house by the Morgan daughter. A. I find it very difficult—in fact, I couldn't give you an exact time because, as I say, there was no reason to remember times.

Q. Well, could you say whether it was closer to six o'clock or closer to the noon hour? A. I don't think it would be so late as six, although I really don't know why I would say that, but judging from the light I would say no, that it was considerably earlier.

Q. And what's the next thing that happened of any significance? A. Well, the next thing that I remember, he came up and had something in his hand, and he had this four-chambered bottle. Now, I have referred to it as a brandy bottle. Frankly, I'm not too aware of the different terms applied to a liquor bottle. I called it a brandy bottle because that's what I thought it was, but it was a four-chambered, rather decorative affair, a round base, narrow neck, and I knew the contents was liquor of some description.

Q. Had this been in the house for some period of time? A. This had been in the house for close to two years.

Q. And you say he came up—I take it referring to your husband? A. Yes.

Q. Were you aware of any other types of liquor bottles in the house at that time at all? A. No, we have not kept it in the house, we have no reason to.

Q. Were there any types of liquor bottles, either full, empty, partly filled, to your knowledge? A. No, there would not, only to my knowledge, but they wouldn't be there without my knowledge. I am the private detective in my family.

Q. Do you consume alcoholic beverages yourself? A. No.

Q. I presume you have something to do with the cleaning around the house? A. Yes.

Q. The next significant thing you started to indicate to us was your husband coming upstairs and he had some boxes in his hand? A. Yes.

Q. And also had this bottle that you have described? A. Yes.

Q. Where were you at this point, what part of the house? A. Oh, I was in the bedroom—I was in the bedroom and I cannot honestly tell you whether I was sitting at the desk or sitting on the bed. I probably was sitting at the desk. The desk is in the same room as the bedroom."

Q. Yes. All right. You mentioned he was carrying some boxes? A. Yes, or had something in his hand.

Q. Something in his hand. All right. What is your best recollection of what happened from that point? A. My recollection is that he took what appeared to be two pills—or pills or a pill. That again I could not give you any idea.

Q. Was there any conversation between you and your husband at this point? A. No, he said to the effect—I cannot give

you a detailed conversation after seven months, but he would say something to the effect that these are the pills that Dr. Morgan sent over and 'I'm going to take them now' and he put the pills into his mouth and took the liquor bottle, and I was very, very angry because he's a borderline diabetic, he never touches alcohol, which is really why we never have liquor in the home, and I knocked the bottle from his hand; I was upset, I was a little bit annoyed at him for being so foolish at that time to take liquor at all, and to use liquor in combination with a sleeping pill. I was a little annoyed.

Q. Well, it had been at your suggestion he ordered the sleeping pills? **A.** It was my suggestion.

Q. I gather from your answers you weren't concerned about him taking sleeping pills? **A.** I was more upset with the idea of liquor than I was about the pills.

Q. Could you see how many pills he took at that point? **A.** No.

Q. Do you have any other recollection of what he said at this point as to why he was doing it other than the fact that these were pills which Dr. Morgan sent over? **A.** No. I can recall, but I can't fit it in. I recollect seeing the two small pill boxes, a pink box and a whitish box, but I can't—somehow my memory just doesn't serve me sufficiently to fit them into the context of what happened.

Q. All right, what's the next thing that happened? **A.** *The next thing, he appeared to be ill and he looked as though he was going to faint, and the boy came up—our son came up at that moment, and I recall asking him to help him, because—'I think Daddy's sick,' and he took his father, and I don't recall whether I helped or not—took his father by the elbow and he said something to the effect of coming 'into the bathroom, Dad', and he got him as far as the door of the den, like—I could show you, I think, illustrate that more clearly with the diagram.*

Q. Is this the door between the so-called den and sunroom and the door out in the hall? **A.** He went through the door—he was just on the edge of the bed, and then his son and I let him into this—the den part, what we call the study.

Q. I take it you'd have to go out through this den or study in order to get into the bathroom? **A.** To get into the bathroom so that we had taken him as far as the door, and he became very, very faint, and my boy said, 'We'll have to sit him down, we can't—'.

Q. You said as far as the door. You're referring now to the door from the middle bedroom or den that leads into the hallway? **A.** Yes, right, and he let his father down very gently and put—his head came to rest on the floor and he was lying in that position, lying across with his head facing toward the hall."

“MR. ECCLESTONE: Q. All right, your son laid him down on the floor. What’s the next thing that happened? A. He appeared to be unconscious and I was very worried, and I said, ‘Hurry, run over and get Mary.’ Mary is our closest neighbour.

Q. That’s Mary Ferguson? A. Mary Ferguson, yes. So the boy rushed over and brought Mary back, and then while I was upstairs with Lucien, one of them or both of them called for an ambulance, and I remember their saying, ‘We’ll call the police because they will have an ambulance here faster than anybody.’

Q. What was your state of mind at this point after your husband collapsed on the floor? A. I was frightened. Frankly, I was terrified because I was sure it could have been a heart attack or it could have been a stroke brought on by the liquor, and I was frantic, I was frightened to death.

Q. And Mrs. Ferguson says you made some remarks about ‘all your fault’ or something of that nature. Do you remember making some remark of that nature to her? A. I don’t remember making that remark, but if I did make it I suppose I would figure it’s all my fault if I hadn’t insisted on getting these pills and if I hadn’t insisted on calling the doctor. As I say, I don’t recall saying it, and if I did, that would be the reason.

Mr. ECCLESTONE: Q. Mrs. Ferguson indicated you were obviously shaken and crying? A. I was. I was terrified.

Q. And she got some coffee to calm you down? A. Yes.

Q. Do you have any recollection of the police arriving? A. No. Shortly before—Yes, I recollect their arriving but shortly before they came we noticed my husband’s breathing had slowed down considerably and I was frightened and I tried mouth-to-mouth respiration, I thought we could at least do that. At that moment the police arrived and Mrs. Ferguson came upstairs and said, ‘You are in no state to see the police, go into your boy’s bedroom and I will attend to them. There is nothing you can do; I will take care of it’; and that is what I did.

Q. Was your husband still lying on the floor? A. Yes. The police had come into the house and Mary came and said, ‘You are in no state to talk to the police’, and I knew he would be helped then because they had arrived.

Q. When the police arrived your husband was still on the floor? A. Yes.

Q. To your knowledge, from the time of the boy assisting your husband from the bed towards—going towards the bathroom, was your husband ever put on the bed, or was he ever on a bed? A. No, definitely not; that is one thing I remember, he never was on the bed at any time.

Q. Did you see him taken from the little bedroom to a position in the hallway? A. No, because I was in the boy’s room.

Q. And the ambulance arrived and your husband was taken to the hospital? A. Yes, and his son and his friend accompanied the ambulance in our own car.

Q. Did your husband say anything that day or indicate in any way that he wished to commit suicide? A. No.

Q. Anything that you could interpret from his action that this is what he intended? A. No, because there was no reason.

Q. There has been some suggestion that someone got the knowledge, or the knowledge came to somebody's attention that there is an allegation that your husband, a suicide pact between you and your husband that day; anything to that at all? A. I don't know where that idea should have originated. To begin with, I had taken nothing myself. In my nervousness I was frightened over his condition; I had a bad headache."

"CROSS-EXAMINATION BY MR. FORD:

Q. Mrs. Kurata, in Exhibit 2-B in these proceedings is a document signed by Dr. Kyne, the psychiatrist at St. Joseph's Hospital, who saw your husband when he was in there following his admission on the 1st of September. They are written notes made by him of history and progress, which have been filed. These notes say, in part, in the writing of the doctor, 'Says he and wife planned a mutual suicide pact but wife did not go along. Then he took wife's tranquilizers.' A. I can't imagine why or under what circumstances he would make a statement like that.

Q. I have not asked you a question. Why would you make a statement like that? A. I thought you told me, or inferred to me, that my husband made that statement to Dr. Kyne, because it is contained in the hospital report. Who else would make such a statement?

Q. I merely said this is what the doctor wrote down. You are right, the inference is that your husband made the statement. Did you tell Dr. Kyne that? A. I wasn't given any opportunity to speak to the doctor.

Q. That information did not come from you? A. Definitely not, no.

Q. Do you know where Dr. Kyne got that information, if he did not get it from you or your husband? A. I can't imagine. I can't imagine where it could have originated."

Evidence of Joseph Lucien Anthony Kurata

The evidence of Lucien Kurata Jr., the 18 year old son of Judge Kurata will be found in Vol. VIII of the transcript from pp. 579 to 602.

He recalls his father tossing the football with him and his

friend Angus Dunn, probably shortly after 1:30 p.m. on the 1st September 1968 and for about half an hour. His father was in a good mood but was a bit tired from "running quite a bit". When they stopped passing the football Judge Kurata sat on the back porch for about 15 minutes and then went in the house.

At 4:30 p.m. "almost exactly" Judge Kurata "stuck his head out of the door and said 'hello'."

At approximately 6:00 p.m. and certainly not later than 6:15 p.m. Kurata Jr. wanted to drive Angus Dunn to the subway station. What happened after that he describes in his own words as follows:

(p. 581 lines 15-24)

"Q. All right— A. —it would be about 6.00 o'clock, Angus wanted to go home and he didn't want to walk up to the subway station, so I said I would ask dad for the car—

Q. All right? A. And I hollered in the back door and got no answer from him, so then I went upstairs to ask him for the car, and I went into the bedroom and he was sitting on the right-hand—

Q. That is being your father and mother's bedroom? A. Yes."

(p. 581 lines 33-40)

"Q. Right? A. And so then I, I think I asked him before I actually went in the bedroom, if I could have the car, and I hollered it again as I got—

Q. Is that before you saw your father—? A. Well, as I was coming through, like, the outer room, and he was sitting on the bed, and I asked him what was wrong—

Q. Why did you ask what was wrong—"

(p. 582 line 30 to p. 584 line 12)

"MR. ECCLESTONE: Q. I asked you a question— A. I am trying—

Q. —you looked at your father and asked him what was wrong, or something to that effect. Why would you ask him— A. He was just sitting there. I didn't say, those weren't my exact words, 'What was wrong', I just said, 'Are you all right?', or something. I just can't remember the exact words, but I distinctly remember him speaking, he said, 'I feel sick', and those are his exact words, so I thought it was nausea—

Q. Well, how did he look? A. The thing that impressed me the most were that his pupils were quite dilated, his eyes were quite large, and he looked bilious; I thought he was going to be sick—

Q. Right— A. So I thought—

Q. Were you aware of your mother's presence at this point?
A. No, I wasn't. I thought, I believe, at the time she was in the library, but I am not sure. Like, I didn't see her there so I couldn't say on oath that she was—

Q. I see. **A.** You see, I was quite sure my father was going to be sick to his stomach, so I felt I should take him to the washroom—

Q. Right— **A.** —and so I told him to get up, and he walked well, like, without any help from me, for about six steps into the den or bedroom outside—it is not a bedroom—

Q. I think it has been referred to as the 'den'— **A.** Well, he walked through the den about six steps till he got almost to the den door, and there he was, he lost his balance. He was quite, quite dizzy, so I put my arm around the back of his shoulders and lowered him to the floor, and at this stage I, I didn't know what it was, I thought it possibly was a stroke, some kind of heart attack, and so I went downstairs and I was going to get Dr. Morgan as quickly as possible—

Q. Were you aware of your mother's presence at this point?
A. No, I wasn't.

Q. Any recollection of where she was? **A.** No, and I made the decision in my mind that I shouldn't call her because it would upset her, first of all, and if it wasn't anything serious I thought that, like, my mental thoughts were just to get Dr. Morgan as quickly as possible.

Q. All right. What did you do? **A.** Well, I can't remember whether I phoned—I dialed EM. 1-1111.

Q. Is that the emergency number? **A.** Yes, I dialed that, but I can't remember whether I went down for Dr. Morgan first or whether I phoned that number first, I'm really not sure of that.

Q. Do I take it from your evidence you did dial the emergency number at one point, and you are not sure whether it was before you left the house or after you came back? **A.** I can't say on oath, but I'm absolutely certain that I phoned the emergency number before I went to Dr. Morgan's.

Q. And what was your purpose in doing that? **A.** To get an ambulance, sir."

Then when he found no one at home at Dr. Morgan's he decided to get Mrs. Ferguson to come over and help him. He learned from his mother that his father had taken some pills. His father was quite unconscious and breathing quite irregularly.

He found two small pill boxes on the headboard of his father's bed and gave them to a policeman who had arrived and probably this happened at the hospital where he had gone in his father's car

with Angus Dunn. He believes one of the pill boxes rattled as if it were not entirely empty but he did not open either of them.

With respect to any liquor bottle, he said:—

(p. 587 lines 19 to 39)

“Q. Did you see any liquor bottles that day? A. Yes, sir. There was a bottle of brandy or—this is—it’s, you know, a bottle of liquors, it has four compartments in it with four nozzles at the top, and it has four different kinds of liquor in it.

Q. Had you seen this bottle prior to September 1st? A. Oh, yes.

Q. Did you, to your knowledge, know how long it was in the house? A. Well—

Q. Just approximately, had it been there for some time? A. Yes, it’s been over a year, because I remember it—like, past one Christmas.

Q. Did you see that bottle at all that day? A. Yes.

Q. Where did you see it? A. When I went into my parents’ bedroom it was sitting on the southeast corner of the bed on the side of the bed overlooking the pond.

Q. It wasn’t on the bed itself? A. No, it was sitting on the floor. Do you have a picture of our place?”

He says his father had been complaining of personal worries and he told the police officer this when the policeman told him at the hospital that his father had attempted to commit suicide but had survived.

There were some unimportant discrepancies between his recollection of events and Mrs. Ferguson’s recollections. More serious, however, were the very decided discrepancies between his evidence, Judge Kurata’s evidence and Mrs. Kurata’s evidence.

The most significant of these were drawn to his attention, but he was unable to reconcile them.

The Evidence of Dr. E. L. D. Morgan

Dr. Morgan’s evidence will be found in Vol. IV of the transcript pages 193 to 210 and although it was essential that he testify, his evidence is only important on a few points.

He and his family live at 15 Grenadier Heights, Toronto, six doors from the Kurata family. He is a general practitioner and has been the family doctor to the Kuratas since about 1960.

He treated Judge Kurata, for example, for one illness in April 1967 and another in June 1968.

He had also treated Mrs. Kurata for a variety of problems, including emotional disturbances. In 1962 he prescribed 20 meprobamate tablets (anti-tension tranquillizers) and 8 seconal capsules (barbiturate sleeping pills).

On the 22nd. March 1967 he had occasion to repeat this prescription.

On the 27th February 1968 and again on the 25th. April 1968 he prescribed 40 meprobamate tablets for her.

The normal dosage for seconal is one at bedtime, and for meprobamate 'one—four times a day as needed.'

On Sunday, 1st. September 1968 he was not on duty and was actually enjoying a holiday, sailing out of Toronto Bay on his boat.

Mrs. Morgan reported a request for medication for both Judge and Mrs. Kurata and he authorized her to release to them six seconal sleeping tablets and 20 meprobamate.

Taken altogether, he is of the opinion that they would not constitute a lethal dose, but reaction would be very fast if accompanied with alcohol. It was also Dr. Morgan's opinion that the combination of tranquillizers and sleeping pills was not an inherently dangerous thing, his answer to this particular question being (Evidence p. 201 lines 10 to 18)—"Oh, well, I, I am not an authority on this, and yet I understand that while the sleeping capsules may act centrally on the brain and on the respiratory centres, meprobamate does not work in that area and therefore I don't think that there would be much synergistic action or combined action between the two."

The seconal capsules were one and a half grains each. In light of this the following evidence of Dr. Morgan assumes some significance:

(Evidence p. 207 line 15 to p. 208 line 24)

"Q. Supposing he had taken even one or two seconal pills and perhaps one or two of the meprobamate pills, and washed it down with a small quantity of liquor, is it possible, having in mind that we presume that he hasn't built up any tolerance to these things, that he would become confused within a very short period of time after this? A. Yes, I am sure he would.

Q. Become disorientated as to the normal functions a person would perform? A. Yes.

THE COMMISSIONER: Q. To carry it one stage further, Mr. Ecclestone, would he become unconscious? A. Um—did you say just two?

MR. ECCLESTONE: Q. Well, I sort of put it out as 'two seconal' and 'two meprobamate' and 'a small quantity of alcohol'.

A. Yes. Well, I mean he would feel very dopey, he would sleep, and where you draw the line between sleeping and unconsciousness is, I don't know.

THE COMMISSIONER: Q. As the dosage increased they could have induced unconsciousness? A. Yes, you would not be able to rouse the person.

Q. I do not want to unnecessarily interrupt your cross-examination, Mr. Ecclestone, but the doctor used a phrase I wanted to clear up while he was at it. He said alcohol enhances the rate of absorption. What is the significance of the rate of absorption? A. Um . . . well . . . um . . . I suppose it would have a lot of it in the bloodstream at once. Now, the body is breaking it down continuously while it is being absorbed, so if it is being absorbed slowly and being destroyed while being absorbed, there would be a lower blood level and it would be destroyed—

Q. Do I understand that the effect of the drug is itself increased by rapid absorption? A. Yes.

Q. So does it also follow that rapid absorption of a lesser quantity of a lethal dose is of a different quality or effect than the normal absorption of such a dose? A. Yes, and that's why they express this in other terms. I said that this was my way of looking at it, when I consulted the Poison Control Centre, they said for, they quoted it this way, that ten grains, with alcohol, in a small person, with no tolerance, was considered minimum lethal dose.

Q. This is seconal? A. This is seconal.

Q. Ten grains, with alcohol, no tolerance, no history of tolerance? A. That is right, and a small person.

Q. A small person. Minimum lethal? A. Yes. But I would think that in this particular instance the size, I would say an average person would be 100 pounds and Mr. Kurata is close to 200 pounds, so you could probably double that dose for him.

Q. Have you any experience of that? A. No."

The only additional comment I should make with respect to Dr. Morgan is that no medication would have been prescribed and delivery authorized as it was to Judge Kurata on Sunday, 1st. September 1968, had he not been a neighbour and patient and the medication similar to previous prescriptions for Mrs. Kurata.

Evidence of (Mrs.) Muriel Caroline Morgan

Mrs. Morgan's evidence, which also appears on Vol. IV, pages 182 to 193, is important only with respect to the request for medication from the Kurata household.

She says that it was either (and she can't be sure which) just before leaving for church or just after returning, that is before 11:00 a.m. or after 12:30 p.m., she had a call from Judge Kurata. She describes that call in these words:—

(Evidence p. 183 lines 29 to 39)

“Q. I see.

And in this, what you refer to as the first call, what if anything did Judge Kurata say? A. Um . . . Well, he requested, he stated that he had been having a bit of difficulty sleeping lately and would my husband be able to give him something for this, and at the same time he added, almost incidentally—I couldn't be sure whether Mrs. Kurata was in the background asking him to ask or not, you know—could she have a refill of her prescription.

Q. For what? A. For meprobamate.”

Dr. Morgan was in the habit of checking by telephone for messages, but Mrs. Morgan forgot to pass this one on the first occasion that Dr. Morgan telephoned home after Judge Kurata's initial call.

She received a second call from Judge Kurata which she believes to have come in prior to 4:00 p.m. This time she did not forget to mention it to Dr. Morgan and he authorized her to have the six seconal and 20 meprobamate delivered to the Kurata house. This was actually done by Dr. and Mrs. Morgan's nine year old daughter. Mrs. Morgan went out for supper that evening and it is her best impression that she left shortly after 4:00 o'clock to go to her parents' home.

Evidence of (Mrs.) Mary Ferguson

Mrs. Ferguson's evidence is in Vol. II of the transcript, pages 120 to 137. She is the neighbour that Mrs. Kurata says she instructed her son to call and that her son says he rushed over for on his own initiative and without having spoken to his mother at all as to his father's apparent illness.

Mrs. Ferguson describes what she recalled on the important points as follows:

(Evidence p. 120 line 8 to p. 124 line 39)

“MR. FORD: Q. Mrs. Ferguson, I understand that you and your husband live at 24 Grenadier Heights? A. Yes.

Q. In Toronto. Do you know Judge Kurata? A. Yes.

Q. Do you see him here today? A. Yes.

MR. MALONEY: Well—

MR. FORD: All right, it doesn't matter. A. Yes.

Q. Yes, he is a neighbour of yours? A. Yes.

Q. Where does he live? A. Directly across the street from us.

Q. Thank you. Yes, thank you. Do you recall the 1st of September, 1968, Mrs. Ferguson? A. Yes, I do.

Q. Were you at home that day? A. Yes, I was.

Q. And late in the afternoon of the 1st of September did anyone from the Kurata home come to your door? A. Yes, young Lucien came to the front door.

Q. That is the son of Judge Kurata, is it? A. Yes.

Q. Yes, about how old is he? A. Seventeen or eighteen.

Q. Yes? A. I believe.

Q. And when you say he came to the front door, came to the front door, rang the doorbell, or attracted your attention in some way? A. Rang the doorbell or knocked.

Q. I see. In any event did you see him? A. Yes, I went to the door.

Q. Yes, and what, if anything, did he ask you?

MR. ECCLESTONE: My Lord—

MR. FORD: Just a moment, please.

MR. ECCLESTONE: I don't want to keep jumping up but can we assume that I am objecting to anything that ordinarily would be hearsay evidence? I do not have to stand up every two or three minutes?

THE COMMISSIONER: Yes, I think we clearly understand the nature of the evidence that you are objecting to and you are relieved from making a specific objection to each particular passage.

MR. FORD: Yes, the instances will be quite clear, in fairness to my friend.

Q. And what, if anything, did he say to you? A. Young Lucien asked me to come over to their house and he indicated that something was wrong.

Q. I see. Did he amplify that or is that the gist of it? A. He didn't say very much at the front door.

Q. Fine. And what, if anything, did you notice about his attitude at that time? A. In crossing the street, I was going with him, he seemed rather urgent.

Q. I see. His attitude, correct me if I am wrong, indicated, when you were crossing the street, that something was urgent, you mean? A. That is right. We rather rushed over.

Q. I see. Then you rather rushed over the street I take it, with Lucien? **A.** Young Lucien, yes.

Q. To Judge Kurata's home? **A.** Yes.

Q. And on the way over, what conversation, if any, did you have with him, what further conversation? **A.** He indicated that he thought something was wrong upstairs and asked if I would go up.

Q. Yes. Did he indicate he had been there or not, upstairs or not? **A.** No.

Q. Then when you reached the Kurata home, I take it you and he went in, you and Lucien went in? **A.** Yes.

Q. Pardon? **A.** Yes.

Q. Yes, and what, if anything, did you do? **A.** I ran right up the stairs.

Q. Yes? **A.** And found the room.

Q. Yes. Was there anyone in the house, the lower part of the house, when you came in? **A.** There was a young lady, a friend of Lucien Junior's, and young Christine.

THE COMMISSIONER: Young who? **A.** Christine.

Q. Who is she? **A.** The youngest Kurata.

Q. This is a daughter? **A.** Yes.

MR. FORD: **Q.** And you say you rushed upstairs, what about Lucien? **A.** Lucien stayed downstairs.

Q. Yes, then were you—I'm sorry, when you went upstairs where did you go? **A.** To the very back bedroom.

Q. Yes, and what did you observe? **A.** Mrs. Kurata and Judge Kurata.

Q. Yes? **A.** In that bedroom.

Q. Yes, and where was Judge Kurata in the bedroom? **A.** He was lying on the bed and Mrs. Kurata was sitting on the bed.

Q. And how did he appear lying on the bed? **A.** He appeared unconscious.

Q. And what about Mrs. Kurata? What, if anything, did you notice about her appearance? **A.** Mrs. Kurata was crying.

MR. ECCLESTONE: I am sorry, I didn't hear that.

MR. FORD: 'Mrs. Kurata was crying'.

Q. And after observing—well, did you have any conversation at that time, immediately, with Mrs. Kurata? **A.** I called Lucien right away, young Lucien, to call an ambulance.

Q. Yes, where was he, he was downstairs or upstairs, Lucien? **A.** He was downstairs.

Q. I see, so I take it you went to the stairs, called Lucien—
A. Yes, to the top of the stairs.

Q. I see. After you had done so did you see Lucien again, young Lucien? A. Young Lucien came upstairs.

Q. I see. And what took place after that? A. He took his father into the adjoining bedroom and laid him—

Q. He was on the bed? A. Yes.

Q. Yes? A. Yes, and then he pretty well dragged his Dad into the adjoining bedroom and laid him flat on the floor.

Q. Yes, and what did he do then? A. He sort of loosened his collar and slapped his face.

Q. I see. A. Rather lightly, and turned his head to one side.

Q. Yes, and how did Judge Kurata appear at this time? A. Very quiet.

Q. Yes. Conscious or unconscious? A. I would say unconscious.

Q. Yes, and did you at that stage have any occasion of conversation with Mrs. Kurata? A. Yes, I tried to calm Mrs. Kurata.

Q. I see. Did you have any conversation with her? A. I had asked her what had happened here.

Q. Yes, and what did she say? A. She indicated that Judge Kurata had taken some kind of pills and washed it down with brandy.

Q. Yes, after you received that information what, if anything, did you do? A. Looked for pill boxes or bottles of which I found none.

Q. You are shaking your head. You found none? A. I found none.

Q. You found no pill boxes? A. No, or pill bottles.

Q. Nor pill bottles. Did you find any brandy or liquor bottles? A. I didn't look and I don't recall seeing any.

Q. Of any kind? A. No.

Q. Do you recall, generally, where you were looking for the pills or pill boxes? A. I recall going into the bathroom and checking a couple of bedroom waste-baskets and the dresser tops in that immediate bedroom.

Q. Yes, and you didn't see any? A. No. I didn't.

Q. Now, you have told Lucien the son to call an ambulance, while he was downstairs, and after you had been told by Mrs. Kurata that he had taken pills and washed them down with brandy, and looked for pills, did you do anything further about

the ambulance? Had it arrived? A. It seemed a long time for the ambulance.

Q. Yes, so what if anything did you do? A. Either Lucien or I called the ambulance again.

Q. Indicating, I take it, you don't remember whether it was he or you? A. No. I am quite sure it was young Lucien.

Q. Is there a phone on the second floor? A. I do not remember, I do not know.

Q. In any event, after either Lucien the son or you had called the ambulance again, I take it you remained in the upstairs part of the house? A. I stayed pretty well with Mrs. Kurata.

Q. I see, and what was her condition at this time? A. She was crying, she just seemed over-wrought.

Q. What, if anything, at this stage, did Mrs. Kurata have to say, or you to her? A. The main thing I remember her saying is that it was all her fault.

Q. Yes. Did she say what was her fault? A. This thing that had happened.

Q. I see. And then did either an ambulance or a police officer arrive? A. A yellow squad car arrived first with a single police officer.

Q. Yes, and did the police officer come upstairs? A. He came right upstairs.

Q. And what did you observe the police officer doing? A. He took Judge Kurata and sat him in an upright position in the hall, leaning against the hall railing, and he slapped him quite hard to see if he would come about.

Q. Did Judge Kurata appear conscious or unconscious at this time? A. He appeared unconscious to me."

Evidence of Police Constable William Burrows

See transcript Vol. II, pp. 137 to 148

Constable Burrows of the Metropolitan Toronto Police Force was on duty and alone driving in a squad car when at 6:57 p.m. he received a radio call as a result of which he proceeded immediately to the Kurata home at 27 Grenadier Heights, Toronto. Actually he was close by and arrived there only a minute later.

He says he was taken upstairs and found a man, who appeared to be unconscious, lying on a bed. Next having been told that this man who, of course, was Judge Kurata, had taken a quantity of pills and brandy, Kurata Jr. pointed out to him an empty pill container. He was not sure if it was glass or cardboard. He further

testified that there was an empty bottle of brandy on the bedside table, that it was an ordinary 26 ounce bottle—single compartment only.

Thereafter, Kurata Jr. and the constable, he says, moved Judge Kurata from the bed to the second floor hallway. He was unable to rouse him, even by slapping him quite hard.

Later in his evidence, he was not sure that there may not have been two pill containers. In any event, it or they were given by him to the ambulance driver who arrived shortly thereafter. He himself escorted the ambulance to St. Joseph's Hospital.

Evidence of Henry Wallace Nachuk

See transcript Vol. III pp. 152 to 165

This witness is an ambulance attendant employed by the Emergency Services Organization, Toronto. His ambulance report, filed as Exhibit 8, shows that as the result of a call received at 6:46 p.m. on the 1st. September 1968 he arrived at 27 Grenadier Heights at 6:54 p.m. It is also apparent from Exhibit 8 and other evidence that he left 27 Grenadier Heights at 7:01 p.m., arrived at the emergency entrance at St. Joseph's Hospital at 7:06 p.m. and cleared from St. Joseph's Hospital at 7:21 p.m.

He says he found a man we know now to be Judge Kurata on a bed in a second floor bedroom. He was "slightly unconscious", i.e., he could induce some vital reaction from the man.

He testified further that he received one or two empty plastic pill containers from the constable which he turned over to a nurse at the hospital. When they arrived at the hospital Judge Kurata was definitely unconscious.

There was no reference by this witness as to a liquor bottle and indeed he was not asked about one.

Evidence of Brian Stephen Lyons

See transcript pp. 165 to 168

This witness was Nachuk's partner and the driver of the ambulance. He confirms Nachuk's evidence that Judge Kurata was on the bed when they arrived and that he was unconscious on arrival at the hospital.

He says he saw an empty liquor bottle which he couldn't

describe in any more detail, lying on the floor near the head of the bed, when they arrived, and that Nachuk actually kicked it as they approached the bed.

Evidence of Barbara O'Neill

Transcript – Vol. I, pp. 8 and 9

Miss O'Neill is the Medical Records Librarian of St. Joseph's Hospital. She produced a file containing the official hospital records relating to Judge Kurata and this file was entered as Exhibit 2.

Evidence of Elaine Murray (Sister Mary Janet)

See transcript Vol. III pp. 168-179, and Vol. V pp. 265-270A

This witness is the Administrator of St. Joseph's Hospital and was only required to identify the nature and character of the records contained in Exhibit 2 and to identify the doctors and where possible, the nurses whose names and signatures appeared on various records contained in Exhibit 2.

Evidence of Dr. Hazel Lavina Agnes Lickley

Transcript of Evidence Vol. IV, pp. 210-221

Dr. Lickley, a fully qualified surgeon was on duty in the Emergency Department of St. Joseph's Hospital at approximately 7:00 p.m. on Sunday, 1st September 1968 when Judge Kurata was brought there. On his arrival it was observed that he was deeply unconscious. She was informed that, as recorded on Exhibit 2A, "took unknown quantity sleeping pills & tranquillizers & liquor."

He was treated as one suffering from a possible overdose of pills, appropriate emergency procedures were carried out, and a blood sample was sent for testing for barbiturate and salicylate levels.

Judge Kurata's progress from deeply unconscious to a not "too deep level of unconsciousness" was very rapid and at about 8:00 p.m. (Dr. David O'Brian Levy, the Senior Resident at the hospital having been consulted by Dr. Lickley), he was admitted and transferred to the Intensive Care Unit where he ceased to be the responsibility of Dr. Lickley.

Dr. Lickley says that she was given no pills or pill containers by any one at the time of Judge Kurata's admission and certainly none were ever produced on this inquiry.

Evidence of Dr. David O'Brian Levy

Transcript of Evidence Vol. IV, pp. 221-232

Dr. Levy's connection with the case ended for all practical purposes when he agreed with Dr. Lickley that Judge Kurata should be admitted to the Intensive Care Unit to come under the care of Dr. Veronica Halmos, the Staff Medical Doctor at St. Joseph's Hospital.

Dr. Levy wrote and signed the first History and Progress Report, Exhibit 2C, on the night of the 1st September 1968 which is, of course, consistent throughout with the Admission Statement and report Exhibit 2A.

Evidence of Dr. Veronica Halmos

Transcript of Evidence Vol. IV pp. 234-261

Dr. Halmos, already referred to as the Staff Medical Doctor was informed by telephone on the night of the 1st September 1968 of Judge Kurata's admission and the treatment and procedure that had been carried out.

She did not see him herself until the following morning, Monday, 2nd September 1968.

By that time, as far as she was concerned, he was physically fit to be discharged and needed no further assistance from her or her department.

However, because of the reported reason for his admission, i.e., overdose of pills, confirmed by the blood test which showed a moderately elevated barbiturate level, she referred the patient, in accordance with established routine, to the Staff Psychiatric Service, where he came under the care of Dr. Kyne.

She was the doctor responsible for preparing and signing the Final Note, on the occasion of the patient's discharge on Wednesday, 4th. September 1968, wherein among other things, which merely recite the patient's condition on admission, treatment in general terms and progress, the Final Diagnosis is recorded as follows:—

"Final Diagnosis
Barbiturate Overdose
Depression."

This document which, of course, comes from the official hospital records, and signed by Dr. Halmos, was marked as Exhibit 2H.

Evidence of Dr. William Peter Kyne

Transcript of Evidence Vol. IV pp. 261-264, and Vol. V pp. 306-341

Dr. Kyne is a well-known specialist in psychiatry, has given expert evidence in Court on many occasions and at all material times was the head of the Psychiatric Department of St. Joseph's Hospital.

He was a most reluctant witness for reasons that I must respect, in so far as they do not reflect on his credibility, but which are in my view, wholly untenable, having regard to the fact that his testimony was absolutely vital on one issue that I am required to investigate and report upon, namely the allegation of attempted suicide of Judge Kurata on the 1st September 1968. He claimed absolute privilege as a psychiatrist, with respect to all statements made to him by Judge Kurata, while in St. Joseph's Hospital, and had to be ordered to answer.

I will deal with this ruling as to privilege in due course.

Dr. Kyne acknowledges his handwriting and signature on Exhibit 2D, being Dr. Halmos' request for Dr. Kyne's consultation and report. That initial report Dr. Kyne says was made on Tuesday, 3rd. September 1968 and reads as follows:—

“This man is unwilling to be specific as to why he attempted suicide.

Prov. Da. (sic Provisional Diagnosis)—Neurotic—Depressive Reaction

Pa. (sic Patient)—Not ready for discharge from hosp. but can be transferred from I.C.U. Will follow.

W. P. Kyne”

This short Consultation Report must be read in conjunction with the lengthy History and Progress Report of the 3rd. September 1968, entirely in Dr. Kyne's handwriting and signed by him, which I quote in full,—only expanding abbreviations which Dr. Kyne agreed to in giving his evidence.

| | |
|--------------------------|---|
| “Birth: | 19 June 1923 |
| Place: | Toronto |
| Occupation: | Magistrate |
| Religion: | Anglican |
| Marital: | Married (3 kids 20, 18, 13½) |
| Address: | 27 Grenadier Heights, Toronto 3, RO. 7-3427 |
| Presenting Complaint: | Admitted to I.C.U. via Emergency 1 September 1968 followed overdose of tranquillizers; unconscious when brought to hospital. Says he and wife planned a mutual suicide pact but wife did not go along and that he took wife's tranquillizers. |

Background: Father died 1962 aged 82 from cerebral arteriosclerosis. Mother 82, active. Patient is an only child. Nail biter. Graduate Osgoode Hall 1948, entered law practice and Reeve of Swansea; Magistrate three years. Says he enjoys his work. Married 1947—'We've had our ups and downs'—says he worries over wife and kids. Treated for diabetes 1963 at St. Michael's Hospital and for tonsillitis 1966. Financial problems—cause—change from law practice to magistrate. *Mental State*—'I feel fine now—would like to get back to work as soon as possible. No persecutory ideas elicited. Sensorium clear. Would like 'another day or two in hospital in order to restore my peace and quiet.' *Diagnosis*—Reactive Depression.

(signature of)—Wm. Kyne"

Finally Exhibit 2E is on the printed form provided for St. Joseph's Hospital for consultation records requested as in this case by Dr. Halmos, the attending physician from another physician known as the consulting physician, in this case Dr. Kyne.

Exhibit 2E is a typed record, dated September 3rd. 1968, with copies to Dr. Halmos, Dr. Kyne and chart. It is signed by Dr. Kyne twice. It has obviously been dictated by Dr. Kyne based on his handwritten notes that have already been quoted. I quote Exhibit 2E in full as follows:—

"REPORT

I interviewed this 45-year-old magistrate September 3rd 1968. He was admitted to the I.C.U. via the Emergency on September 1st 1968 following an overdose. He alleges that he has domestic problems, (wife's recurrent depression, concern over his children, financial problems, change of position to magistrate from a private law practice 3 years ago).

Examination of his mental state reveals him to be quite composed, alert with no evidence of psychosis and his sensorium was clear. Outwardly he does not appear to be depressed and stated 'I feel fine and would like to get back to work as soon as possible' but when it was suggested that he might be ready to leave today he stated that he would like 'another day or two in hospital.'

In summary therefore this man does not impress us as being fit for discharge at the present time. We hope for more specific reasons and co-operation as to why he attempted suicide. He does not at the present time qualify to be a resident of the I.C.U. and

I suggest that he be transferred to a bed on the general side of the hospital for a couple of days. I will be happy to follow his case.

(signed) W. KYNE

W. Kyne, M.D., Staff-Psychiatric Service.

WK/ps

CC: Dr. Halmos

Dr. Kyne

CHART

4 Sept '68

(signed) DR. W. Kyne

(signed) Dr. W. Kyne

Signature of Attending Consultant"

Dr. Kyne was then cross-examined by Mr. Ecclestone. He testified as follows:—

(p. 314, lines 10-43)

"Q. I gather from your note that you have had written on Exhibit 2-E from your consultation with him on September the 4th, you felt that is is proper that the patient be discharged?

A. Yes.

Q. So I gather that you felt that in order to discharge this patient, that he was exhibiting no suicidal tendencies? A. No.

Q. And there was no danger in releasing him? A. That is correct.

Q. And is it therefore fair to say that he was then suffering from mental disturbances that required any treatment, sort of put in layman's language? A. Well, shall I say no emergency treatment, perhaps some following treatment might be indicated.

Q. Did you indicate that to Judge Kurata? A. Not to my recollection.

Q. and you did nothing to see if there was any follow-up treatment? A. No.

Q. Can we interpret from what you say as indicating that it may have been judicious to have follow-up treatment? Did you give it much consideration? A. I give consideration to all these cases, but in this particular case Mr. Kurata's attitude was such that I felt he understood why he was in hospital and that if a follow treatment were needed it was up to him to pursue it.

Q. And, as he indicated to you, he wished to get back to work? A. Yes.

Q. Do you know what type of work he did? A. He was a magistrate.

Q. It didn't concern you he would go back and sit as a magistrate? A. No.

Q. In other words, he could perform his functions as a magistrate, as far as you were concerned? A. Yes."

(p. 316, line 20 to p. 317, line 10)

“Q. Now, do you specifically remember the patient saying to you that he and his wife planned a suicide pact but the wife did not go along with it, that he took the wife's tranquillizer? Do you remember him saying that to you? A. I do not recall his saying that to me.

Q. Is it conceivable that that information in that sentence that I have just read to you could have been received by you from some other source other than the patient? A. It is conceivable.

Q. Because it occurs to me, doctor, that there is nothing concerning any alleged suicide pact which—I suppose it is something that would stick out in your mind, that would be something that would be a little out of the ordinary, is that a fair statement? A. It's hard to answer. I see a lot of people who attempt suicide.

Q. But the idea of a suicide pact, you don't have that many even in your vast experience? A. Not very many people ever attempt a suicide pact. If there were many I would recall it.

Q. That would be an unusual situation even in your vast experience? A. Yes.

Q. Well, then, perhaps you will appreciate what I am getting at, there was nothing in your sort of formalized report that you dictated that is in the form 2-E concerning any mutual suicide pact, you would agree with that? Have you got 2-E in front of you? A. Yes, there is no mention of a suicidal pact on the dictated note.

Q. All that is mentioned is, 'Wife's recurrent depression, concern for his children, financial problems, change of position to magistrate from a private practice three years ago'? A. Yes.

Q. Is it therefore logical for me to assume then that because it isn't contained in your—really, what I suppose is your final report or your formalized report, there is nothing about a suicide pact—that this then is the information you must have gained from some other source other than the patient? A. I would have to agree.”

(p. 328, line 27 to p. 329 line 31)

“MR. FORD: Q. I am reminding you of Mr. Ecclestone. You were asked, 'What did Kurata tell you?', and you said, in effect, you got as much as possible from a patient and Kurata gave various reasons, but did not go into details. I say to you, the end of that sentence would be, when you say he gave various reasons, you mean various reasons for attempting suicide? A. Do I have to answer that question, my Lord?

THE COMMISSIONER: Q. Yes, you do. My task is at least as difficult as yours, Dr. Kyne.

MR. FORD: Q. What is the answer, yes or no? A. Yes.

Q. Thank you. And that, of course, without amplifying it, doctor, is clearly spelled out in Exhibit 2-D, your report, 'this man is unwilling to be specific as to why he attempted suicide'; and 2-E, where you say, 'We hope for more specific reasons and co-operation as to why he attempted suicide.' That confirms that, right? A. Yes.

Q. Yes.

THE COMMISSIONER: Q. You were trying to find out to help this man, this is your purpose? A. Yes, sir.

Q. Of course.

MR. FORD: Q. Was one of the reasons for the suicide pact that you wrote in, was that one of the various reasons he gave you, the suicide pact? A. Suicide pact already mentioned?

Q. Was that one of the reasons he gave you? A. He didn't reveal this to me at any time. I am quite convinced now this was given to me in hearsay.

Q. You are referring, again, to 2-B, where you say, 'Was there any complaint?', 'Patient says he and wife planned a mutual suicide pact and wife did not go along, then he took wife's tranquilizers'. You realized this is what Kurata was talking about? A. Yes. Again, I felt this to be hearsay.

Q. If you now believe that to be hearsay, and as you told me before lunch probably written in before you went in to consult with the patient, what were the other reasons he gave you? What were the various reasons, or some of them for attempting to commit suicide? A. Mr. Kurata listed certain problems, domestic and financial. Those are the only other reasons I referred to.

Q. Referred to in Exhibit 2-B, your written report, where you referred to financial problems, domestic problems of some kind or other, and where you end up with a diagnosis of reactive depression? A. Yes."

(p. 330, line 2-line 32)

"Q. Regardless of whatever source you got that, the only reason for attempted suicide recorded in your presenting complaint part of your report was the statement you had written in, you say before, 'Says he and wife planned a mutual suicide pact and wife did not go along, then he took wife's tranquilizers'? A. That statement, I am quite sure in my own mind, was recorded before I had an opportunity to talk to Mr. Kurata.

Q. If you are quite sure that was before and that was the only explanation, that was the reason for attempting suicide that was written in, your opinion now before you saw him, what did you discuss with him about it? Did you ask him to confirm or deny it? A. No, I did not.

Q. Really, doctor? A. Well, one has to approach these patients in different ways, they are all different personalities, and I must admit, where Mr. Kurata was concerned, I approached him with a great deal of diffidence. It is not every day one has an opportunity to interview a judge, or doctors. If one is willing to express themselves, all well and good, but if not I do not press them.

Q. I was referring to the presenting complaint part of your report, the reference to his financial problems and he and wife problems were elicited from your discussions with him and set in the background of the mental state. Is that right? A. Yes.

Q. Are you seriously suggesting, doctor, the only reason having been given to you, from whatever source, was the story of the suicide pact, that you did not discuss with him at all those facts? A. I don't recall taking up the aspect of suicide with Mr. Kurata."

(p. 331, lines 10-15)

"THE COMMISSIONER: That is not the question Mr. Ford put to you. The question was: Did you not take up the aspect or issue of the suicide pact with Judge Kurata? A. I don't recall doing this, sir.

Q. But may you have done so? A. I don't think so. No, not honestly."

(p. 336, lines 12-42)

"THE COMMISSIONER: And that is something else, I mean, if one understands the English language. A. But, in essence, I was accommodating Mr. Kurata, if he expressed the wish to stay in hospital a day or two longer, this was quite all right with me.

Q. I want to go back to Exhibit 2-B. I will read the part to you that is really bothering me.

In the 'present complaint' section, after the stop following the words 'unconscious when brought to hospital' stop, 'Says he and wife planned a mutual suicide pact.' Now, to my mind, you are attributing in your written, signed statement words to Judge Kurata. Not anybody else. It says, 'Says he and wife planned a mutual suicide pact.' Now, doctor, you must know that attempted suicide is an offence; a suicide pact, even in those jurisdictions where attempted suicide is not an offence, is a serious offence; and yet, by your language, you attribute that as an admission by Judge Kurata to his own mouth.

How could you use, carelessly use, words like that? A. Well, it troubles me also, sir.

It does—I admit—seem to indicate that Mr. Kurata said this directly but, on reflection, my recollection is that this is hearsay,

I have no distinct recollection of Mr. Kurata ever telling me he was involved with a suicide pact with his wife or get mention of a suicide pact at all.

Q. And yet this is the document that goes to the official record? A. Yes."

Hospital Records and the Psychiatric Evidence

The question of privilege with respect to communications received by a doctor and most particularly a doctor specializing in the field of psychiatry is one that is of great public interest.

It may be helpful to recall the extent of and the limitations on the privilege accorded communications from a client to his solicitor. This is, of course, the only general privilege recognized by our law. It is succinctly stated in Orkin—Legal Ethics and I quote the relevant portions from pages 83-86:—

“It is the duty of a lawyer to preserve his client’s confidences. In practice this means that he must keep secret not merely communications made to him in confidence by his client but also any information about his client’s affairs which may come to him in the course of acting for the client. For a lawyer to gossip about the affairs of his client is not only bad taste; it is a breach of a very important ethical obligation which continues even after the retainer has been terminated and from which he can only be released by his client.

Canon 3 (7) provides in part: ‘He should scrupulously guard and not divulge his client’s secrets and confidences.’

From earliest times it has been an inflexible rule of the common law that confidential communications passing between a client and his solicitor are privileged and may not be disclosed without the consent of the client. The protection thus afforded to professional communications is based on the need for confidence between a client and his professional adviser without which, it has been said, the administration of justice could not go on.”

“No privilege exists or can be claimed (A) when the communication relates to an unlawful transaction, such as the commission of a crime or a fraud . . .”

“The duty of a solicitor to whom a communication has been made in furtherance of a crime or fraud is to divulge it when called upon to do so by due process of law. He need not, however, volunteer the information unless the crime is a serious one; there appears to be no duty of disclosure in the case of minor offences and the solicitor is entitled to follow the dictates of his own conscience in deciding whether or not he should inform the proper authorities.”

Mr. Ecclestone on behalf of Judge Kurata urged me to rule that information disclosed by a patient to a psychiatrist (and he limited it to that particular field) should be accorded a complete privilege without exception. This is the light of what Dr. Kyne recorded in Exhibits 2B, 2D and 2E becomes a most startling proposition because those documents contain evidence of two offences under the Criminal Code of Canada, namely, attempted suicide and a suicide pact.

The former offence, i.e., attempted suicide, is dealt with in Section 213 of the Criminal Code which reads:—

“213. Every one who attempts to commit suicide is guilty of an offence punishable on summary conviction.”

The offence involved in a suicide pact is set out in Section 212 of the Criminal Code in the following words:—

“212. Every one who

- (a) counsels or procures a person to commit suicide, or
- (b) aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and is liable to imprisonment for fourteen years.”

The attitude of western communities towards the attempted suicide is well exemplified in the following quotation from “Mental Abnormality and the Law” by H. Jenner Wily, and published in New Zealand in 1962. I quote from portions of Chapter 15, pp. 329-321:—

“For the ten years 1946-55 of 39,152 cases of attempted suicide known to the British police, no prosecution followed: of 5,447 charged and convicted, 308 were imprisoned (Brit. Med. J., 24/5/58, pp. 1225 and 1233). Nevertheless in 1959, of 4,980 cases known to the police, proceedings were taken in only 518 and none were sent to prison (Criminal Statistics England and Wales 1959, Cmnd 1100, H.M.S.O.)

In 1959 the Criminal Law Revision Committee in England were informed that the Home Secretary was considering whether legislation should be introduced to provide that suicide and attempted suicide should no longer be criminal offences (Brit. Med. J., 29/10/60, p. 1301), and that consequential amendments to the criminal law would be needed to deal with offences which would cease to be murder if suicide ceased to be self-murder. The Committee in its recommendations emphasised that those who attempted suicide were ‘in a state of mental distress and unhappiness’ and needed ‘special sympathy and understanding.’

Under the influence of Beccaria, France had abolished the criminality of the suicidal attempt after the revolution, and other

European countries followed. Even the totalitarian governments of Germany, Italy and the U.S.S.R. did not re-impose a penalty. Scotland and South Africa never punished the attempt. India, Pakistan, Western Australia and a few of the United States such as New Jersey made the attempt criminal, as did the new Zealand Crimes Act 1908. Nevertheless the New Zealand Health Amendment Act 1960 enabled a Magistrate to make an order committing the person who had attempted suicide to any hospital for a period not exceeding 3 months or to place such person under the supervision of a relative, Medical Officer of Health or Probation Officer if of opinion that the person was in need of care or treatment; this did not amount to a conviction. The Crimes Act 1961 in New Zealand abolishes the criminality of the suicidal attempt. For some years in New Zealand prosecution had usually been waived if the patient was placed under proper care."

With respect to suicide pacts, however, it is obvious from the very language of Section 212 of the Criminal Code, above quoted, that a decidedly serious view is taken of such actions. The same author deals with this subject as follows:—

"For reasons which may arouse some sympathy, or be entirely reprehensible, one person may aid, abet or incite another to commit suicide. He was then an accessory before the fact to self-murder, and therefore guilty of murder. The Criminal Law Revision Committee in England in 1960 recommended the maximum penalty for a person aiding another to commit suicide of 14 years; s. 179 of the Crimes Act New Zealand follows this recommendation. Section 180 of the same Act declares it to be manslaughter to kill another in pursuance of a suicide pact.

Suicide pacts, in which two persons agree to die together, provide the commonest instance in which a second person is criminally involved in a suicide. The great majority of suicide pacts are made by husband and wife, a few by lovers, and very occasional ones by other pairs in some emotional relationship, such as parent and child, or two siblings. The law of secondary parties in England made the survivor of a suicide pact guilty of murder, although because until 1861 an accessory could not be convicted before the principal, and the principal in this instance escaped conviction by death, the matter was of merely academic importance. When this rule was altered by statute, the wife who survived a suicide pact with her husband could, until 1925 when the law was amended, shelter behind the legal presumption of coercion. From 1925 all survivors of suicide pacts, and from 1861 all survivors but a wife, were guilty of murder, although in practice over many years the death sentence was always commuted.

The Criminal Justice Act 1954 in England altered the penalty in such an instance to life imprisonment; s. 180 (2) of the Crimes

Act, New Zealand, 1961, lays down a maximum penalty of 5 years for the survivor of a suicide pact, and directs that he is not to be convicted under s. 179 of aiding and abetting suicide."

To urge that a psychiatrist be afforded an absolute privilege from disclosure is to my mind a proposition that must be rejected, offending as it does the basic philosophy that makes a person who, although no party to an offence, but who actively conceals an offence, liable to prosecution and possibly punishment up to 14 years imprisonment for being an accessory after the fact, and the basic philosophy underlying the concept by which in England certainly such a person may still be convicted of the ancient common law misdemeanour of misprision of felony.

As already pointed out, it goes far beyond the privilege granted to solicitors.

After argument I ordered the hospital records to be marked as Exhibit 2 and directed that the doctors involved submit to examination and cross-examination. My ruling given orally after argument was as follows:—

(p. 301 line 18 - p. 305 line 43)

"On the issue before me now, as to the admissibility of documents that have been marked as 2-B, 2-D and 2-E for identification from the hospital records, I refer first to a lengthy chapter in the McNaughton Revision of Wigmore on Evidence, which is the American authority, Volume 8, Chapter 86. It starts at page 818 of that particular volume, 'Communications between physician and patient.' I refer to Wigmore particularly because the author, in dealing with the matter, has to deal with quite a number of American States who, by statute, have granted the specific privilege that is claimed in lesser form but relating to part of the medical profession in this inquiry. The author has the opportunity of contrasting the American law with the laws as they are known in this country and in Great Britain.

At the opening of the article, Article 2380, the author says this:

'It was early understood, in the precedents of English law, as soon as the secrecy of private confidence in general was finally settled to be no justification for a legal privilege that confidences given to a physician stand upon no better legal footing than others.'

The author quotes the famous, ancient case of the Duchess of Kingston's trial, reprinted in Notable British Trials Series (Melville ed. 1927), where Lord Chief Justice Mansfield is quoted as saying as follows. It was a bigamy case.

‘Mr. Hawkins, a physician, who had attended the accused and her alleged husband, when asked whether he knew from the parties of any marriage between them, answered, “I do not know how far anything that has come before me in a confidential trust in my profession should be disclosed, consistent with my professional honour”.

If all your lordships will acquiesce, Mr. Hawkins will understand that it is your judgment and opinion that a surgeon has no privilege, where it is a material question in a civil or criminal cause to know whether parties were married or whether a child was born, to say that this introduction to the parties was in the course of his profession and in that way he came to the knowledge of it . . . If a surgeon was voluntarily to reveal these secrets, to be sure, he would be guilty of a breach of honour and of great indiscretion; but to give that information in a court of justice, which by the law of the land he is bound to do, will never be imputed to him as any indiscretion whatever.’

The author continues:

‘This has ever since been accepted by English judges (in spite of an occasional and proper dispensation by courtesy).’

I think that this is a most complete and accurate statement of the law as it has been understood since 1776 and, as I drew attention in the course of argument, it was adopted in comparatively recent times by Lord Justice Denning in the case of *McTaggart v. McTaggart*, 1949, Probate Division, page 94, in his judgment at pages 98 and 99, where a probation officer had been subpoenaed and the contest was then entered into as to the privilege that could be accorded or ought to be accorded as a matter of policy to that particular individual.

Lord justice Denning stated as follows:

‘The probation officer has no privilege of his own in respect of disclosure any more than a priest, or a medical man, or a banker . . . ’,

and then he continues on to deal with that particular case, and the evidence was admitted.

It is clear that this is not a matter which is dependent upon ancient views; it is a matter that has had to be considered in modern times and from time to time. Counsel very correctly drew my attention to the cases of *Dembie v. Dembie* (unreported) and *G. v. G.* (1964) 1 O.R. 361, and a recent case in which Mr. Justice Morand presided, where the private interest was paramount to the public interest, then the Courts have properly exercised their discretion in granting a privilege, in that particular circumstance, to the physician or psychiatrist as it may be.

Now, as I understand it, that is the underlying principle.

The legislatures of our country have uniformly declined to make the privilege statutory in such circumstances, as far as physicians or psychiatrists are concerned, and I must take notice of that.

The Courts themselves have extended privilege by courtesy, in the exercise of the Court's discretion in special circumstances, as reported in English and Canadian cases.

Now, in this particular matter I have to deal with what is defined in The Evidence Act of Ontario as something included in the word 'action', as it is used in the amendments to The Evidence Act that were made in 1966 and 1968.

The amendment in 1966, dealing with records kept in the ordinary course of business, has this to say:

'35a. — (1) In this section,

(a) "business" includes every kind of business, profession, occupation, calling, operation or activity, whether carried on for profit or otherwise;

(b) "record" includes any information that is recorded or stored by means of any device.

(2) Any writing or record made of any act, transaction, occurrence or event is admissible as evidence of such act, transaction, occurrence or event if made in the usual and ordinary course of any business and if it was in the usual and ordinary course of such business to make such writing or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter.'

Section 1 of The Evidence Act itself—that is the Revised Statutes of Ontario, 1960, Chapter 125, defines 'action' in which evidence is admissible, to include proceedings on an inquiry and before a commissioner.

I refer then to Exhibit 1, which is the Letters Patent issued under the Seal of the Province of Ontario and signed by the Provincial Secretary and countersigned by the Lieutenant-Governor, in which the terms of reference to me are as follows:

'to inquire into and report upon the circumstances relating to the behaviour or misbehaviour of Provincial Judge Lucien Coe Kurata and respecting his ability or inability to perform his duties properly including an alleged attempt by the said judge to commit suicide on September 1st, 1968 and an alleged incident involving the said judge with policewoman Marlene Watson.'

The Letters Patent first of all refer specifically to the Provincial Courts Act, which came into force in the latter part of 1968 and with a specific reference to subsection 1 of Section 4 of that statute, which makes provision for an inquiry of this sort.

I think it is perfectly obvious that the matter therefore is one of distinct public interest rather than mere private interest as between two litigants, and that I must approach the question of the admissibility of evidence and the extension of privilege to it in the light of those circumstances.

There is no doubt that under the regulations published under The Public Hospitals Act, and on the evidence of this inquiry, that the documents in question were made and came into being in the ordinary course of the work of the hospital and as required by that legislation.

They therefore are admissible by reason of the statute to which I referred.

The question remains as to whether, as a matter of public policy, I ought to exercise my discretion and extend a privilege to the psychiatrist who was responsible, as his duty was, to make these records.

In my view,—and I have read these documents; I read them for the first time this morning—they are distinctly relevant. They bear directly on one of the matters to which I am required by the Letters Patent to direct my attention and to inquire into. They are not a matter in which the private interest outweighs the public interest.

The public interest is certainly paramount in this case and I rule they are admissible in evidence.

Turning now to the submissions made by counsel on behalf of Judge Kurata, that the proper way to introduce them is through the mouth of the doctor who made them rather than in the form of written records, I point out that the policy of the amendments to The Evidence Act has been to relieve persons making records from unnecessary attendances in Court where the information obtainable from the written record kept either by rule of law or in the ordinary course of business. They can be objected to, not on the basis that it is not the best evidence, but that counsel wish the opportunity of cross-examining the person who made the records, and that if they are merely admitted on the basis of written records then that opportunity for cross-examination is lost.

In the circumstances of this inquiry it is my view that the evidence should be admitted in the terse form in which they are in the records, and that Dr. Kyne should be presented for cross-examination and re-examination as counsel may desire."

Shortly after making my ruling my attention was directed to the unanimous judgment of the House of Lords in the recently reported case of *Conway v. Rimmer*, [1968] A.C. 910. I quote the headnote and portions of the judgment of Lord Morris of Borth-Y-Gest.

"*Held*, that the documents should be produced for inspection by the House of Lords, and if it was then found that disclosure

would not be prejudicial to the public interest or that any possibility of such prejudice was insufficient to justify their being withheld, disclosure should be ordered.

When there is a clash between the public interest (1) that harm should not be done to the nation or the public service by the disclosure of certain documents and (2) that the administration of justice should not be frustrated by the withholding of them, their production will not be ordered if the possible injury to the nation or the public service is so grave that no other interest should be allowed to prevail over it, but, where the possible injury is substantially less, the court must balance against each other the two public interests involved. When the Minister's certificate suggests that the document belongs to a class which ought to be withheld, then, unless his reasons are of a kind that judicial experience is not competent to weigh, the proper test is whether the withholding of a document of that particular class is really necessary for the functioning of the public service. If on balance, considering the likely importance of the document in the case before it, the court considers that it should probably be produced, it should generally examine the document before ordering the production.

In the present case it was improbable that any harm would be done to the police service by the disclosure of the documents in question, which might prove vital to the litigation."

"**LORD MORRIS OF BORTH-Y-GEST.** My Lords, stated in its most direct form the question—one of far-reaching importance—which is raised in this case is whether the final decision as to the production in litigation of relevant documents is to rest with the courts or with the executive. I have no doubt that the conclusion should be that the decision rests with the courts.

The present case is one between two private litigants. The plaintiff claims damages for malicious prosecution against the defendant, who was a superintendent in a police force. The defendant has in his possession, custody or power certain documents which, as is admitted, relate to the matters in question in the action. As to five of them the plaintiff's desire for production is resisted. The Home Secretary swore an affidavit in which he stated that he gave instructions that 'Crown privilege' was to be claimed for those five documents and in which he recorded his grounds for objecting to their production.

It is, I think, a principle which commands general acceptance that there are circumstances in which the public interest must be dominant over the interests of a private individual. To the safety or the well-being of the community the claims of a private person may have to be subservient. This principle applies in litigation.

It has been clearly laid down that the mere fact that a document is private or is confidential does not necessarily produce the

result that its production can be withheld. But in many decided cases there have been references to a suggestion that, if there were knowledge that certain documents (for example reports) might in some circumstances be seen by eyes for which they were never intended, the result would be that in the making of similar documents in the future candour would be lacking. Here is a suggestion of doubtful validity. Would the knowledge that there was a remote chance of possible enforced production really affect candour? If there was knowledge that it was conceivably possible that some person might himself see a report which was written about him, it might well be that candour on the part of the writer of the report would be encouraged rather than frustrated. The law is ample in its protection of those who are honest in recording opinions which they are under a duty to express. Whatever may be the strength or the weakness of the suggestion to which I have referred it seems to me that a court is as well and probably better qualified than any other body to give such significance to it as the circumstances of a particular case may warrant."

I cannot avoid some sense of gratification that my own ruling is in precise conformity with the judgment of Lord Morris and the other members of that Court, although given without the benefit of reference to that case.

Conclusions

From the evidence that I have recorded, it is impossible for me to come to any other rational conclusion but that Judge Kurata did something, namely consumed an overdose of barbiturates and tranquilizers together with alcohol in the late afternoon of Sunday, the 1st. September 1968 in an attempt to commit suicide. Dr. Kyne's written records made immediately following an interview with Judge Kurata at St. Joseph's Hospital, Toronto, in the morning of Tuesday, September 3rd. 1968, confirmed by the same doctor's sworn testimony on this inquiry, amounts simply to this that Judge Kurata told him that he had attempted suicide.

The circumstances of his action are entirely consistent with this admission and inconsistent with any other rational conclusion.

There is no doubt that he was worried and upset about his daughters. He was a person, totally unused, according to all the evidence to the taking of pills, even of aspirin, and to whom the consumption of alcohol was not only foreign but actually known to be dangerous because of his border-line diabetic condition.

And yet, on a warm Sunday afternoon, on the last long summer weekend of the season, with a holiday from work on the next day.

having according to him, had no lunch, he makes two telephone calls to Dr. Morgan's house to get sleeping pills and tranquillizers and at some time, just prior to a normal dinner hour, having made no preparation for retiring to enjoy an uninterrupted refreshing sleep, he consumed an unknown number of pills and an unknown quantity of alcohol.

I do not intend to review all the evidence in detail. Judge Kurata now denies that he was attempting suicide. It is impossible to believe him. I have no doubt that he made the attempt and that it was only by reason of the fact that he is a sturdy husky man and that the overdosage was not actually lethal that he escaped death as he did.

Glanville Williams in his excellent treatise *The Sanctity of Life and the Criminal Law* (1957) in dealing with unsuccessful attempted suicides says this at p. 285:—

“It seems from this that what may be generally called ‘suicidal acts’ are of three kinds. First there are the genuine attempts at suicide, which may or may not succeed, but usually—if they are genuine—do succeed. Secondly, there are the suicidal demonstrations, where what is superficially an attempt at suicide is not seriously meant, but is merely, in Dr. Neustatter’s words, ‘a gesture by a patient suffering from a bad depression, calling upon the world to take notice of his misery.’ Thirdly, and intermediate between the other two, are suicidal acts that are consciously an attempt at suicide, but unconsciously a gesture. It is in these that the patient gambles his life, running perhaps grave risk of death but unconsciously hoping that it will turn out to be merely a successful gesture, resulting in an improvement of his situation.”

I have read many texts and articles on this subject and they are consistent with the view that Dr. Kyne took that it was proper to release this man from hospital, especially since he himself was well aware of what had brought him into the hospital in the first place. The incidents of recurrence are apparently very rare.

The problems that drove Judge Kurata to this action and the psychiatric implications are quite foreign to my knowledge and to the scope of this inquiry.

One cannot but have the deepest human sympathy and compassion for such a person. I regret that he did not frankly testify that he had done exactly what he told Dr. Kyne he had done, namely attempted suicide.

Instead of that, he took the position that the hospital records prepared by dedicated professional people who were doing their

best to help him were all false and simply fabricated from statements of unknown persons.

By his denial on oath, of records whose accuracy on this point do not admit of doubt, he has created what is now commonly called, a credibility gap that becomes very serious for him. It is this aspect of the matter which deeply concerns me, in view of the other matters into which I am bound to inquire.

**The Alleged Incident of Friday, 1st. November 1968
Involving Kathleen Lonsberry**

THE EVIDENCE OF MARY ROSE KATHLEEN LONSBERRY

Transcript Vol. V pp. 341-353, Vol. II pp. 354-402

This witness, upon being sworn, asked for and was granted the protection afforded a witness pursuant to the Canada Evidence Act and the Ontario Evidence Act. This protection, of course, is no protection against perjury with respect to sworn testimony being given on the inquiry.

At the time of giving evidence she was awaiting trial on a charge of being a common prostitute, etcetera, (Vag. C.)

She is 27 years of age and admitted in chief to Commission Counsel the following convictions, all in Toronto which are confirmed from the police record, Exhibit 10.

| | <i>Date</i> | <i>Charge</i> | <i>Presiding Magistrate</i> |
|-----|---------------|--------------------------|-----------------------------|
| (a) | 15 June 1960 | Vag. C | Magistrate Prentice |
| (b) | 10 May 1961 | Theft of Ladies Raincoat | Magistrate Addison |
| (c) | 23 Dec. 1964 | Vag. C | Magistrate Bolsby |
| (d) | 27 June 1966 | Vag. C | Magistrate Dneiper |
| (e) | 26 Sept. 1966 | Possession of Narcotics | Judge Waisberg |
| (f) | 1 Nov. 1968 | Theft (minor) | Magistrate Bolsby |
| (g) | 7 Nov. 1968 | Vag. C | Magistrate Gianelli |
| (h) | 21 Nov. 1968 | Vag. C | Magistrate Taylor |

A number of other charges of a similar nature to the above had been laid against this woman, but they had all been withdrawn or dismissed.

In no case had she ever appeared before Judge Kurata and all sentences imposed on her had been comparatively trifling.

At approximately 9:15 on Friday, 1st. November 1968 she was seated on a bench in the public corridor outside No. 33 Court Room. Exhibit 3A shows this area and also the sign indicating No. 33 Court Room entrance and the entrance to an inside hallway that runs easterly to Judge Kurata's chambers. The description of this inside hallway will be given in more detail when I deal with the evidence of Policewoman Watson.

She says there were not many people in the hallway, no uniformed officers in sight, and she was waiting for her lawyer as she had to appear in No. 33 Court before Magistrate Bolsby.

Her evidence continues as follows:—

(Vol. V p. 345, lines 2-15)

"and Magistrate Kurata walked by and nodded his head, and I wondered why, and I just looked at him, and I thought, you know, why did he nod his head at me?

Q. Did you know him as Magistrate Kurata before that?

A. Well, I have seen him in his robes down in 23 Court, walking through the corridor, yes.

Q. I see. Did you know him personally? **A.** No.

Q. And he was garbed in his robes, Magistrate's robes?

A. Not at the time he passed me, no.

Q. Oh, wasn't he? I see. I beg your pardon.

And after he nodded to you, what did you see him do? **A.** Um . . . At the time he walked into his, the hallway—"

The witness then marked Exhibit 3A to record the relevant positions of herself, the bench on which she was seated and the entrance to the inside hallway.

Her evidence then continues:—

(Vol. V p. 345 line 37 - p. 347 line 18)

"**Q.** And so you say Magistrate Kurata nodded to you and then what happened after that? Where did he go? **A.** Well, he walked into the hallway there, in the picture, and I just sort of looked because I wondered why he nodded—this hallway here (indicates) and then he reappeared again—

Q. Just a minute. He walked through where? **A.** This hallway here (indicates).

MR. FORD: The witness is indicating the doorway into the corridor north of the main hall.

THE WITNESS: I guess it is the Magistrates' chambers.

Q. I see. And in which direction, if any, did you see him go after that? **A.** He turned to the right.

Q. That is the right, into the position we are looking at—
A. This way (indicates).

Q. That is—the witness is indicating to the right, being going east. That is the main hallway or behind that door. A. No, he went through the door.

Q. Yes? A. And turned to the right, then I was just watching, and then he reappeared again.

Q. Well, we'll come to that. So he walked through the entrance—indicating the door into the corridor, my Lord—and turned to your right, that is going east, out of your sight? Right?

A. Yes.

Q. And then? By the way, do you see the man you describe as then Magistrate Kurata here today? A. Yes, I do.

Q. Do you see him—where is he? A. Right there, sir (indicates).

Q. You are indicating— A. The gentleman with the glasses.

Q. —Judge Kurata. Did you at any time know any reason why he should nod to you? A. No—frankly, I thought I was going to be charged with something else again, you know. That is why I got up—

Q. Did you see Magistrate Kurata again after he had nodded to you and walked through that door, east on the corridor? A. Yes, he reappeared in the door after a short period of time and beckoned to me. So I figured I was already in quite a few charges, so I figured I must have done something wrong again, so when a magistrate tells you to get up, you get up, so I automatically went to see what he wanted.

Q. Apart from what you were supposing he might be beckoning at you for, did you know of any reason for him beckoning to you? A. No.

Q. And when he reappeared, he reappeared where? A. In the doorway.

Q. In the doorway from the corridor into the hall? A. Yes.

Q. Yes. What did you do? A. Oh, I sort of just sat there for a moment, and then I thought it was best I get up and go see what he wanted, because I thought I was going to be charged with something again, Your Lordship.

Q. And did you go toward him? A. Yes, I did, sir.

Q. And what, if anything, was said? A. Uh, he said, 'I would like to speak to you.' And he walked—

Q. Did you say anything to him? A. No, I just wondered why, so I, he just walked towards, which now I know is chambers—

Q. So he said he would like to speak to you, and what did he do then? A. He opened the door and I walked in—

Q. This conversation was at the door, going into the corridor from the other hall? A. Yes, that is when he said he would like to speak to me.

Q. And what did he do after that? A. Um—He opened the door and I walked in.”

(Vol. V, p. 348 line 8 - p. 349 line 5)

“Q. Yes. And what happened after that, as he was walking down the corridor and you following? A. He opened the door and I entered, and he told me to be seated, and he was walking around and—

Q. Was the door—he opened the door—did you go in? A. Yes, sir.

Q. Did he go in also? A. Yes. He closed the door behind me.

Q. Yes? Yes. And what did you do then? A. Um—I sat down and Judge Kurata was walking around and he started asking questions, and, ‘What is your name?’ and, ‘What are you charged with?’, and things like that.

Q. I show you a photograph, Exhibit 3-J, in these proceedings. Do you recognize that as the office you were in or not? A. Yes, sir?

Q. And about where were you sitting? A. I was sitting here, and the washroom is here.”

The witness then marked Exhibit 3J, photo of the interior of Judge Kurata's office, to indicate various positions, and her evidence continued:

(Vol. V, p. 349 line 17 - p. 350 line 42)

“MR. FORD: 3-J. At my instructions the witness has marked with an ‘X’ on the wall, my Lord, next to the chair she indicated to me that she was sitting in.

THE COMMISSIONER: May I see that, please?

MR. FORD: Certainly.

THE COMMISSIONER: Yes, there are two chairs that appear to be facing the desk, and then a high-backed chair which one would take would be used by the person who used the desk normally?

THE WITNESS: Yes.

Q. And you have marked on the wall an ‘X’ on the lefthand chair facing the desk? A. Yes, sir.

THE COMMISSIONER: That is for the record, so that it is clear.

MR. FORD: Q. So then, after you sat down in the chair which you have marked in front of his desk, what took place then? A. Well, Magistrate Kurata was sort of walking around, and then he came and he sat in the chair next to me and he asked me my name and what I was charged with, and I sat down. Again I was smoking at the time.

Q. Excuse me, he asked you your name and what you were charged with. Did you tell him? A. Yes, I did, sir.

Q. Anything else in that connection? He asked you what you were charged with and your name? A. Well, he mentioned about my legs and—

Q. What did he say about your legs? Just say what he told you. A. He said, 'You have nice, long legs', and when he said this he put his hand on my knee and he asked me to raise my skirt, and I slapped his hand.

Q. Now, you told him your name and what you were charged with. Did you have any conversation as to where you were appearing and when? A. I was appearing in 33 Court at the time, and he said that—

Q. Well, did you tell him that or not? A. Yes, I did.

Q. What if anything did Magistrate Kurata then say? A. Well, after I slapped his hand he got up and he said there was nothing he could do for me in 33 Court, but if I ever appeared in his Court he could do me a favour, and this sort of set me back a little because you just don't expect things like that.

Q. He said he could do you a favour? A. Yes, sir, if I done him one.

Q. If you had done him one. When he said he could do you a favour if you did him one, what if anything did you say to him? A. I said, 'What's the favour?', and at this same time he got up and walked into the washroom which was behind me.

Q. I show you what is said to be a photograph—Exhibit 3-C, my Lord—said to be a photograph of the washroom in these chambers. Did you see the washroom—I will come later to the rest—but did you see the washroom that he went into? A. Well, I noticed it when I walked in.

Q. I see. Can you tell us whether or not it appears similar to 3-C? A. Yes, it does.

Q. Then, after Magistrate Kurata went into the washroom what took place next? A. Well, I repeated myself, I asked him, 'What was the favour, your worship?'

Q. Yes, did he say anything? A. He didn't say anything, so I got up and went to see what he was doing, why didn't he answer and tell me what the favour was, and I looked into the washroom."

She then described a decidedly disgusting and indecent act which she says she saw Judge Kurata performing.

Her evidence then continued:—

(Vol. V, p. 351 line 5 to line 36)

“MR. FORD: Q. And what if anything did you do or say when you observed this? A. I told him he was sick, and he put his hand on my shoulder and asked me to undo my zipper, and I said, ‘You’re in the wrong room, you shouldn’t be on the Bench’, that, ‘You’re just sick’, and I wanted to get out of there and he put his hand on my shoulder and asked me to undo my zipper. And that’s when I ran to get my coat and try to get out of the door.

Q. And did you get the door open? A. I can’t remember if it was locked or not, as I was trying to watch what he was doing and get out at the same time, and I was nervous because—

Q. Because of what? A. Because I was nervous.

Q. And as you were getting the door open what if anything did Magistrate Kurata say? A. He kept saying, ‘Don’t leave, it won’t take long, don’t leave’, and I said, ‘You’re crazy, you’re sick. You know, if anyone ever walked in there’s going to be a lot of trouble to pay, and I didn’t want any part of it.’

Q. You were pending trial yourself. A. Yes. Q. That morning? A. Yes, sir.

Q. And did you get the door open? A. Yes, I did.

Q. And what did you do? A. I ran down the hall to the courtroom.

Q. To what courtroom? A. 33 Court.

Q. I see. And did you attend No. 33 Court when your case was called that morning? A. Yes, and Court was just going in and I went in because I didn’t want to see Magistrate Kurata again, so I just went into Court.”

Upon her appearances in November 1968 which have been recorded, including the one of the 1st. November 1968, she received jail sentences which resulted in her serving jail terms from the 1st. November 1968 until she was released on the 28th. December 1968, almost 60 days later.

On her way to Court #33 from Judge Kurata’s chambers on the 1st. November 1968 she saw one of the officers that had arrested her, whose name she did not know. Her evidence with respect to this is as follows:—

(Vol. V, p. 352 lines 19-24)

“MR. FORD: Q. And what conversation did you have about what had happened with him? A. Well, I was sort of shaking,

and he asked me what was wrong, and I just said 'I'm upset about my case.'

Q. You didn't inform him of the facts of what had just happened? **A.** No."

Then, as to how she came to be giving evidence on the inquiry, she testified as follows:—

(Vol. V, p. 352 line 25 to p. 353 line 18)

"Did you at any time, Mrs. Lonsberry, subsequent to the 1st of November, 1968, inform the police of the facts of this incident as you have told us today? **A.** I have spoke to an officer about it but it was just in general conversation, my lordship.

THE COMMISSIONER: **Q.** When was that? **A.** Well, it was when I was released.

Q. This would be after the thirty days? **A.** Yes, sir.

Q. And how long—? **A.** I got out December 28th.

Q. December 28th or November? **A.** No, December 28th.

Q. December 28th. It was after that? **A.** Yes, sir.

MR. MALONEY: What was established as happening on that day?

THE COMMISSIONER: It was after December 28th that she spoke to some officer about this episode.

MR. FORD: **Q.** And what if anything did you inform him at that time? **A.** Well, we were just speaking generally, my lordship, you know, in general conversation, and it just came up. I didn't even know there was being an inquiry or anything else, or else I wouldn't have come forward at all, to be truthful.

Q. Did you at that time know of this hearing? **A.** No, I didn't know that Judge Kurata was on the hearing.

Q. I see. When did you first know of this inquiry about the conduct of Judge Kurata? **A.** About—I think it's two weeks now.

Q. Under what circumstances did you learn of it? **A.** Well, I was picked up by an officer and questioned, and—

Q. I see. As to the facts you have given here? **A.** Yes, sir.

Q. And do you recall the name of the officer? **A.** Sergeant Waverley."

Mrs. Lonsberry was subjected to a long and gruelling cross-examination, in which most unusual latitude was allowed counsel for Judge Kurata.

She had already admitted her convictions in her examination-in-chief, and since proof of previous convictions in a situation of

this sort is only relevant to credibility a witness would not normally be permitted to be subjected to cross-examination thereon. However, since she was giving evidence with respect to an incident virtually identical with that involving Policewoman Watson, and since a Commissioner holding a public inquiry is not bound by the strict rules of evidence, I thought it only fair to Judge Kurata that his counsel be afforded the widest scope in cross-examination, subject only to being stopped from harassing the witness by repeating questions which had already been answered, or from asking questions that were devoid of relevancy.

He was accordingly permitted to cross-examine at length not only on the subject of convictions already admitted but with respect to charges that had been laid against her and either withdrawn or dismissed. Counsel had been furnished with official information as to these, on my express direction.

It is unnecessary for me to deal further with cross-examination on these subjects other than to say that she answered all questions relative to charges laid against her, whether withdrawn, dismissed or resulting in conviction with frankness, candour and entirely free of evasion or argumentativeness with counsel.

The cross-examination then turned to the subject of when she first or ever before mentioned anything about Judge Kurata.

I quote all her relevant evidence on this subject:—

(*Vol. VI, p. 384, line 2 to p. 385 line 16*)

“Q. Now, you told my friend something about the first time you mentioned this to anybody, the incident you say happened in Judge Kurata’s office on November 1st, you mentioned it to a policeman, did you? A. Yes, I did, sir.

Q. Do you remember where? A. No, I can’t recall where I spoke to the gentleman. We were just speaking in general conversation, Your Lordship, and it came up about Judge Kurata. I didn’t even know he was being inquired.

Q. Were you out on the street somewhere? A. No, I was sitting in a car.

Q. Daytime or evening? A. Evening.

Q. Whereabouts were you sitting in the car, what street? A. Sir, that is quite impossible for me to answer at this time.

Q. You don’t remember? A. No sir.

Q. Were you alone? A. Yes, I was.

Q. Were you driving the car or a passenger? A. I was a passenger.

Q. I’ve forgotten—do you remember whether it was daytime

or evening when the officer spoke to you? A. It was probably evening, I'm not sure.

Q. Did you know the officer? A. Yes. I can't remember his name, but I do know the officers and I was speaking to them, Your Lordship.

THE COMMISSIONER: You knew him to see, that's what I understand? A. Yes.

MR. MALONEY: Q. Did you know them by name? A. No.

Q. Did they tell you their names? A. No sir.

Q. My friend Mr. Ford has informed me they're Detectives Renn and Rennie, probationary detectives? A. That could be possible, sir. Basically, I remember, Your Lordship, the names—

Q. Did you call Judge Kurata a very bad name? A. I beg your pardon?

Q. Did you call Judge Kurata a very bad name when you were speaking to these two officers? A. Yes.

Q. What did you call him? A. I said he was sick.

Q. No you didn't, did you? A. Yes, I did.

Q. Did you call him a dirty, slant-eyed old bastard? A. It could have been possible.

Q. You don't deny that it could have been possible? A. No, I don't.

Q. Were you on pills at the time? A. No, I was not.

Q. If officers Renn and Rennie say that you were, are you not telling the truth? A. I can't answer that, sir.

Q. You say you weren't on pills? A. I drink, sir.

Q. You don't use pills? A. I used to. Your Lordship, I used to be on narcotics and now I drink occasionally."

(*Vol. VI, p. 386 line 18 to p. 387 line 17*)

"MR. MALONEY: Q. I just asked you a little while ago, I said if the officers say you were on pills at the time of that meeting, I asked— A. This I'll have to disagree.

Q. You say you disagree. Because, just a couple of minutes ago, you said, in answer to that, 'I don't remember', and that's why I want to clear that up. What did you mean when you said 'I don't remember'? I put it to you did you mean that you don't remember whether you were on pills or not? A. I was drinking, sir.

Q. What about pills? A. I was not on pills.

Q. All right. Well, then, when did you next get approached by somebody about coming here to tell about Judge Kurata? A. About—after I was arrested I was released on bail and I was approached by Sergeant Leybourne.

Q. That is, after your arrest on the early morning of March the 9th, is that right? A. Yes, sir.

Q. Do you remember when it was? We know you appeared in court on March 10th, which was a Monday, and you were let out on bail and next appeared in court on March 17th. A. Yes sir.

Q. When was it you saw Detective Leybourne? A. I think it was two weeks ago, I'm not sure.

Q. Well, let's try to relate it to your appearances in court. We know your first appearance in court was Monday, March 10th, and your second appearance was Monday, March 17th. A. Well, I had been questioned about it and I didn't even know there was a hearing.

Q. That's what I'm trying to find out. When were you questioned? A. On the Monday.

Q. Monday what? A. Evening.

Q. Of what day, the 10th or the 17th? A. The 10th.

Q. The 10th. And who questioned you? A. Sergeant Leybourne.

Q. Did you sign a statement then? A. I signed nothing.

Q. Did he remind you of what you were supposed to have said to these two probationary detectives, Renn and Rennie? A. No, we were just speaking generally talking to each other, that's all.

Q. And that was on Monday, March 10th, you told Leybourne? A. Yes sir.

Q. Did you tell him what you told here in court. A. Yes."

(Vol. VI p. 387 lines 23-26)

"Q. Let's go back to the time you spoke to Detectives Renn and Rennie and see if you remember when it was. A. Mr. Maloney, as I stated before, I cannot remember."

(Vol. VI p. 387 lines 32-41)

"Q. I think if the record that we have been looking at is accurate, that would appear to be the date on which you got your 30-day sentence. You said something to my friend about speaking to the two detectives, I think, after December 28th, you said? A. Yes, that's after my release date.

Q. That was your release date? A. Yes.

Q. When you got out of what prison? A. Mercer Reformatory."

(Vol. VI p. 388 lines 10-15)

"Q. I'll try and put it this way: were you out before Christmas or after Christmas? A. After Christmas.

Q. I see. How long after your release, whenever it was, was it that you saw Detectives Renn and Rennie? A. I don't recall, sir."

The next subject on which she was extensively cross-examined was the alleged incident of the 1st. November 1968 and I quote all her relevant evidence on that subject:—

(Vol. VI p. 389 line 27 to p. 393 line 32)

"MR. MALONEY: Q. On November the 1st what time did you get down to the City Hall for that court appearance? A. Early, about 9, 9.15, I'm not sure, there was hardly anyone in the hall.

Q. When you first arrived? A. Yes sir.

Q. And then your appearance, of course, was, as they all are—at least, the court schedule to appear was scheduled to get under way about 10 o'clock? A. Correct, sir.

Q. And your case was going to come up in 33 Court? A. Yes.

Q. By a quarter to ten, I suppose, the place on November 1st would be pretty well milling with people? A. I guess so, yes sir.

Q. Is that your recollection? A. Yes sir.

Q. Because there would have been quite a few cases, I suppose, going on in 33 Court? A. Yes sir.

Q. I think we know, if we haven't been told, that that's a court where women's cases are actually tried, isn't that right? A. Both male and female.

Q. I understand that women first appeared—made their first appearance in 23 Court and if they didn't plead guilty and there was going to be a trial it was usually remanded to 33 Court, is that your understanding? A. Not necessarily, sir.

Q. Not necessarily. What variations are there in that practice, that you know of? A. If you are remanded to a certain length of time, they usually put you in another court.

Q. I see. Well, anyhow, when you first saw Judge Kurata on November the 1st, was he in his gown or not in his gown? A. He was not in his gown.

Q. Did you ever see him in his gown on November the 1st? A. No, when I left his chambers I went right into court.

Q. So that from the time you saw him on November the 1st until the time you left chambers you never saw him in his gown at all? A. No, I didn't want to see him.

Q. No. And you'd never laid eyes on him before? A. Yes, I have, sir.

Q. Oh, I perhaps misunderstood you. I thought you didn't know who Judge Kurata was.

THE COMMISSIONER: No, no, she testified yesterday she had seen him in his judicial robes before.

MR. MALONEY: Oh, did she?

THE COMMISSIONER: Q. That's as I understand your evidence yesterday? A. Yes sir.

MR. MALONEY: Q. Where had you seen him in his judicial robes before? A. Walking past 23 Court, sir.

Q. When would that have been? A. On one of my charges, Your Lordship, I can't recall the date. I just seen him walk through with his robes on.

Q. Before he ever tried you? A. I beg your pardon?

Q. Before he ever tried you for any offence? A. I have never appeared in front of Magistrate Kurata.

MR. MALONEY: I see. You said yesterday you had seen him in his robes down at 23 Court walking through the corridor? A. Yes, sir.

Q. But you did not see him in his robes on the morning of November the 1st? A. No, sir.

Q. Not only would the crowd of people be milling around for 33 Court on November 1st, there would be a crowd of people waiting for cases be called next door in 32 Court and also down in 34 Court? A. It was fairly early, sir, and there weren't very many people there.

Q. What time was it that Magistrate Kurata was supposed to have signalled to you? Do you remember what time it was you said? A. It was a little after 9.00 or 9.00; I am not sure. I gathered he was getting ready to get ready for his robes, your lordship.

Q. Yes. When my friend was questioning you at page 344, line 18, he says:

'Now, on the 1st of November, 1968, did you have occasion to be in the neighbourhood of the entrance to No. 33 Court in the Old City Hall about a quarter to ten in the morning?

A. Yes, sir.

Q. For what reason were you there?

A. I was awaiting trial.

Q. And before what Magistrate?

A. Um—

Q. If you—

A. Bolsby.

Q. Magistrate Bolsby. And that, I understand, was on a charge of theft?

A. At Eaton's, yes.'

Then, down about line 40:

Q. Were there any other people around at the time?

A. There was just a couple of foreign people sitting in the next seat to me—

Q. Yes—

A. —and there wasn't very many people in the hallway. It was early.

Q. Were there any officers in uniform there at the time?

A. No, there was not.'

I see. I thought you meant there, in the form of my friend's question, you were talking about a quarter to ten. That is not the right time? A. Court was at 10.00 o'clock, sir. It was a little earlier.

Q. A little earlier. How long do you say the episode in the office took? A. Between ten and fifteen minutes, sir.

Q. Between ten and fifteen minutes. Did you go directly from his office to Court? A. I came out in the hall and Detective Getty's partner was there, your lordship, and he asked me what was wrong because I was nervous and I said I was just upset about my case.

Q. Did you go right into Court, then? A. Yes, I went into Court.

Q. Subject to your brief conversation with Detective Getty—
A. It wasn't Detective Getty, it was his partner.

Q. Subject to that brief conversation with that officer you went directly from Judge Kurata's office to the Court? A. Yes.

Q. Was Court in session then? A. No, it was just being called.

Q. That would be 10.00 o'clock, then? A. Yes.

Q. You were in Judge Kurata's office fifteen minutes so it looks as if you went into his office sometime around twenty to a quarter to 10.00? A. It could be possible, sir, I didn't have a watch. I didn't check the time.

Q. Getting into his office. His office, I think you identified its location in the photograph? A. Yes, sir."

(Vol. VI p. 393 line 44 - p. 394 line 45)

Q. Did he go into the bathroom before or after sitting down on the chair beside you? A. He was in the washroom twice, sir.

Q. Was it before he went into the washroom the first time that he put, according to your evidence, his hand on your knee?
A. He put his hand on my knee before he went to the washroom.

Q. Yes. Did he say anything when he put his hand on your knee? A. He asked me to raise my skirt.

Q. Did you? A. No. I slapped his hand.

Q. And, then, he got up and went to the washroom? A. Yes.

Q. That was the first time he had gone to the washroom?
A. No, he had been to the washroom before that.

Q. I thought you told me he went to the washroom twice and I understood he put his hand on your knee before he went to the washroom at all? A. Sir, I explained it to you that he was walking around asking my name, and things like that. He went to the washroom, he came back out and that is when he asked me what I was charged with, what Court I was in. He didn't know the judge or the magistrate in 33 Court and—

Q. Is that when he put his hand on your knee? A. Yes, and asked me to raise my skirt.

Q. Then, you slapped his hand? A. Correct.

Q. You had, from your record, obviously been involved in situations before with men who had made advances to you. Is that right? A. Correct, sir.

Q. So that this was not the first time in your experience where a man had made an advance to you? A. No.

Q. Is that right? Had you ever slapped a man before when he had made an advance to you? A. I have never been propositioned by a magistrate.

Q. I see. So that it is only when a magistrate does things you slap; is that right? A. No.

Q. Had you ever slapped any man's hand before who had attempted to make an advance? A. Yes, I have.

Q. About how many times? A. Quite a few, sir.

Q. Did you get up and walk out of the company of such a person? A. Yes, I have.

Q. Was there any particular reason why you did not get up and walk out of the company of the magistrate when he put his hand on your knee? A. Well, he—After he did this he got up and went to the washroom."

(Vol. VI p. 395 line 27 - p. 396 line 36)

"MR. MALONEY: Q. Let us go back to these other cases, these other cases that you said were quite a few, when men made an advance and you left their company. Did you leave immediately? A. I think so, yes. I am not sure, sir.

Q. I asked you about these occasions—I do not mean to pin you down to exact times, dates, places, and that sort of thing; but you recall you told us a number of occasions when men had made advances to you and you slapped them and left their company. I want to know on those occasions when you left the company of such men, did you leave immediately? A. After I said a few things to them, yes.

Q. You blasted them first, did you? A. Correctly.

Q. How long did it take you to blast them? A. Very shortly.

Q. You blasted them as you were, sort of, on the way out of their company, wouldn't you? A. Yes, sir.

Q. I put it to you, when on previous occasions men made improper advances to you, Mrs. Lonsberry, you were blasting them as you left their company; isn't that right? A. I guess you would say that, sir.

Q. Why did not you do the same to Judge Kurata? A. Because he asked me to do him a favour and I wanted to know what was his favour.

Q. I see. A. I am very curious.

Q. I see. Your curiosity was aroused? A. Yes, it was.

Q. So that is why you did not blast him and leave his company immediately. Is that right? A. I asked him what was wrong with him.

Q. You said he wanted you to do him a favour? A. He said he would do me a favour if I would do him one.

Q. You wanted to find out what he was up to? A. That is right.

Q. Did you suspect what he was up to? A. In my position?

Q. Yes. A. Yes, sir.

Q. You did. So that you were not really shocked at all? A. Yes, I was, coming from a magistrate, I was definitely shocked.

Q. You were not annoyed, I suggest? A. I wasn't annoyed?

Q. I suggest you were not? A. I suggest I was.

Q. Why did not you get up and walk out of his office? A. Because I felt like smacking him.

Q. Why didn't you? A. You don't just slap a magistrate.

Q. Why didn't you go to the partner of Detective Getty and say what happened? A. And have another charge? I was on four charges at the time, sir.

Q. You had not done anything wrong? A. How would it look in Court—"

The Evidence of Probationary Detective

Alexander Morrison Rennie

See Transcript Vol. VI, pp. 402-408

Detective Rennie's evidence, while brief, is of considerable importance. In the latter part of January 1969 he was attached to the Morality Bureau of the Metropolitan Toronto Police and in this capacity it was required, among other things, to maintain surveillance of the actions of known prostitutes. On a day, then towards the latter part of January 1969, he and Probationary Detective Renn were patrolling in a squad car in the area of Dalhousie Street and Dundas Street East, Toronto, when they observed Kathy Lonsberry about to enter a restaurant. They had a conversation with her while she was seated in the squad car.

Someone brought up the name of Judge Kurata and the woman referred to him in the presence of the officers as "that dirty slant-eyed old bastard" and said in effect that he had "propositioned" her but that she would rather go to jail than let him touch her.

Detective Rennie was of the opinion that the woman was under the influence of either drink or some drug at this time and he paid no attention to her remarks about Judge Kurata.

Early in March 1969, after the intention to convene this public inquiry had been announced, upon inquiry being made on my instructions and in accordance with my duty as Commissioner, Detective Rennie recalled this encounter with the woman and reported it to his senior officers. He did not himself question her, nor have anything further to do with the matter.

The Evidence of Probationary Detective Renn

Counsel for Judge Kurata agreed that it would be unnecessary to call Probationary Detective Renn to confirm what Probationary Detective Rennie had testified to.

The Evidence of Provincial Judge Lucien Coe Kurata

See Transcript Vol. VI, pp. 410-413 (in chief)

Vol. VII, pp. 506-512 (cross-examination)

Judge Kurata's evidence with respect to the allegation made by Mrs. Lonsberry was given in chief on Wednesday the 26th March 1969 shortly after the completion of her testimony and he

was cross-examined with respect to it on the following day, the 27th. March 1969.

His counsel had been supplied with a copy of her statement some ten days before and also with a copy of her police record including not only particulars of all convictions but also of all charges that had either been withdrawn or which had been dismissed against her.

In short, everything had been done on my directions to facilitate Judge Kurata's counsel to test Mrs. Lonsberry's credibility.

With respect to Mrs. Lonsberry's allegations Judge Kurata swore that he had never seen this woman in his life, prior to her appearance in the witness box on this inquiry, and hence of course, her story was false from beginning to end, a complete fabrication, not a scintilla of truth in it.

I quote his evidence in full as given in chief:—

(*Vol. VI, p. 412 line 39 - p. 413, line 11*)

“Q. Now, bringing ourselves, first of all, to the evidence of this witness who just gave evidence, Mrs. Lonsberry, she says that on November the 1st she had to be in Courtroom 33 before Judge Bolsby. She says that on that date you beckoned to her, brought her into your office, your chambers or your office, and engaged in highly improper actions. Is her evidence, sir, true or false? A. That evidence is false.

Q. Do you ever recall laying eyes on that lady before? A. I have never seen the witness you referred to before she gave evidence yesterday. Q. And was the first intimation you had of her allegation when we gave it to you the day before the inquiry was to begin, namely, back on March 17th? A. That is correct.

Q. Is there a particle of truth in the evidence of that woman in respect to the allegations she makes against you? A. There isn't a scintilla of truth in anything that woman said.”

Cross-examination by commission counsel was in essence directed to two points.

The first of these was with respect to the striking similarity between the allegations of Policewoman Watson as to what she says happened to her two weeks later, at the identical location outside Court Room 33 in the old City Hall and in Judge Kurata's Chambers which are close by (opening off an inside corridor) while she was standing in civilian clothes waiting to appear in Court Room 33, and what happened to Mrs. Lonsberry.

Judge Kurata agreed and said “As a matter of fact they are almost identical.”

The cross-examination continued and this question was put by myself after some fencing by Judge Kurata with commission counsel:—

(*Vol. VII, p. 510, lines 5-21*)

“THE COMMISSIONER: Q. No, no. A. —and you draw the same inference—

Q. Judge Kurata, the question put to you is: Is not the inference from the evidence of both of these women that, if it is accepted and believed, that each of them were invited to your chambers in the belief that they were prostitutes, that you believed they were prostitutes? A. That is what they said.

Q. Yes. A. Subject to the confusion about the fact that Policewoman Watson said she was a P.W.

Q. I realize that there is that evidence, but that does not affect Mr. Ford’s question or your answer. A. Fine, fine.

MR. FORD: Q. On their evidence that is the clear inference, that you believed they were prostitutes? A. On their evidence, that is correct.”

Judge Kurata was then asked if he could assist the inquiry by suggesting any motive that would prompt Mrs. Lonsberry, a known prostitute with an extensive record for that and other offences, to attack him, a Provincial Judge, in such a fashion.

He answered—“I can’t possibly give any reason why she should do this. Other than as a person who seeks notoriety.”

Evidence of Bernard Cugelman

(*Transcript Vol. VIII pp. 560-579*)

This witness is a young lawyer practising in Toronto for the past two years. On the 1st. November 1968 he was acting for one Cunningham who was jointly charged with Mrs. Lonsberry and one Lyons and hence due to appear in Court Room 33, Old City Hall on that morning.

He says he recalls that he arrived in the corridor area outside that Court Room at about 20 minutes to 10:00 a.m. that morning and was introduced to Mrs. Lonsberry and Lyons by his own client.

He had heard that the charges against his own client were to be withdrawn and he was there to confirm this, and if not, to ask for a remand, as he had to address a jury in the new Metropolitan Court House at 10:30 that same morning.

This, of course, would involve getting across the Nathan Phillips Square, into his gown and to a court room in the Metro-

politan Court House. He certainly had no time to spare to do all this, and some final preparation for his jury address which he also hoped to accomplish.

He says that from the time he was introduced to Mrs. Lonsberry in the corridor outside Court Room 33, which would be at some indefinite time after his arrival, until he left before Court Room 33 opened that morning, Mrs. Lonsberry was never out of his sight, except for the time which he says was a matter of moments, that he was engaged with the Crown Attorney inside the Court room verifying that the charges against Cunningham were in fact being withdrawn.

The purpose of calling this witness becomes abundantly clear from the following passage in his evidence while being examined in chief by counsel for Judge Kurata.

(*Vol. VIII, p. 562 l. 6 - p. 564 l. 4*)

Q. In the time you saw Mrs. Lonsberry at twenty to 10.00 until you left, was she ever out of your sight or presence for any length of time?

MR. FORD: I presume the witness will answer yes or no to the leading question.

THE COMMISSIONER: That is the most leading question I have ever listened to.

MR. MALONEY: Well—

MR. FORD: I take it it goes to the weight of the answer.

THE COMMISSIONER: That is right.

MR. MALONEY: I am not going to quarrel with anybody but I submit it is not leading. It is perfectly proper to ask this witness if the lady was ever out of sight.

THE WITNESS: I was in front of 33 Court for a radius within ten or fifteen feet for almost all the time I was there, except for the brief moment I went in to consult with the Crown Attorney.

Q. Was there anything you can say about the demeanor of Mrs. Lonsberry, about her attitude, her deportment, that would suggest she had just been through any sort of harrowing experience?

THE COMMISSIONER: That is just as leading as it can possibly be, Mr. Maloney.

MR. MALONEY: I submit it is not.

THE COMMISSIONER: You may submit it but it does not make it any less leading.

MR. MALONEY: I submit before you decide the propriety of the question you should hear argument about it.

THE COMMISSIONER: You have suggested the answer as plainly as if you had put it in the witness's mouth.

MR. MALONEY: Q. Was there anything unusual about her appearance that you could perceive? A. Nothing whatsoever. To me she seemed to be quite cool and quite—I would say cool and unperturbed about what was going on.

Q. Specifically, did she, in your presence, make any complaint whatever with respect to any judge, let alone Judge Kurata? A. Certainly not."

The questions put to this man under examination-in-chief were so leading as to make them worthless as spontaneous testimony.

He had not thought about this matter until he heard Mrs. Lonsberry's cross-examination and being, as he says, an admirer of counsel for Judge Kurata, he approached him about it.

His answers on cross-examination on this point are as follows:—

(Vol. VIII p. 576 line 23 - p. 577 line 21)

"Q. So you, in fact, don't know what time that Court opened? A. No, but I do know that it was very close to 10.00 o'clock. Courts often open later, they never open before.

Q. That is right, they do not open before, sometimes later; and you personally don't know how much later it was on this particular day? A. No—

Q. Because you weren't there? A. That is right, I couldn't say that.

Q. You say you saw nothing unusual about the appearance of Mrs. Lonsberry when you saw her, when you arrived, whatever time it was? A. That's what I said.

Q. Hm-hmm. Did you notice she had a black eye? A. She did not have a black eye as far as I can recall.

Q. Or anything about her appearance, nothing unusual you noticed? A. This was the first time I had met the woman. I was introduced to her and my actual conversation with her did not take very long, more or less by way of introduction, and I didn't have much discussion with her—

Q. And she had a lawyer to whom you would normally be speaking about anything about the case, I presume, not the client herself? Mr. Heather? A. I do not even know Mr. Heather.

Q. But you knew she had a lawyer? A. I assumed she had a lawyer.

Q. In any event, as you have told us, this was a fleeting conversation; there was no reason for remembering whether she had

a black eye or otherwise, or her appearance? Is that right? A. Well, I do remember what she, she looked like, and how she acted when she was introduced to me.

She certainly wasn't in any condition of upset or anything near that, no. As far as I can recollect she was very calm and cool.

Q. I know, you told Mr. Ecclestone—I'm sorry, Mr. Maloney, I beg your pardon.

As far as you were concerned, this was a fleeting meeting, just a matter of a few seconds— A. Well, that is true, the actual introduction was pretty fleeting, but don't forget I was out there for close to twenty minutes, and the whole time I was no further than ten feet away from her at any one time."

Conclusions

I will deal with the evidence with respect to the allegations as to what took place on the 1st. November 1968 in conjunction with the allegations as to what is alleged to have taken place on the 15th. November 1968.

The Alleged Incident of Friday, 15th November 1968 Involving Policewoman Marlene Watson

THE EVIDENCE OF P.W. MARLENE WATSON

(See Transcript Vol. I, pp. 17-76)

Policewoman Watson is an attractive young married woman, aged 23, who started as a police cadet in 1964 and was sworn in as a full fledged Policewoman in December 1966. She was immediately assigned to what was then known as the Women's Bureau of the Police Force. This Department was apparently subdivided at the beginning of 1967 to include a Youth Bureau. Since December 1966 she has worked in both divisions, sometimes in uniform and sometimes in plain clothes, on foot and from a patrol car.

Her duties in plain clothes include detection of purse snatchers, persons involved in indecent assaults on women and children, pilfering from the buildings at the Exhibition and so on.

She herself was indecently assaulted on three occasions, while working in plain clothes, i.e. casual wear such as slacks, during the course of the 1968 Canadian National Exhibition.

On the 15th. November 1968, she was waiting outside Court Room 33 in the Old City Hall to give evidence in one of the cases of indecent assault that had occurred at the Exhibition during the preceding August-September.

Court Room No. 33 is located at the north-west corner on the second floor about ground level in the old City Hall. It may readily be reached by staircase or either of two elevators located about the centre of the west section of that building.

There are wide main corridors for public use that run north and south from the elevators in this west section and east from that corridor as it leads to Court Room 33.

Behind and to the north of the main public east and west corridor is a narrow hallway that runs easterly from Court Room 33 to the west wall of Court Room 34. To the north of this hallway are some small offices and a holding cell for prisoners.

The most easterly of these small offices is that assigned to Judge Kurata. A person desiring to enter his room would proceed easterly along this hallway from a door leading from the main corridor and immediately adjacent to Court Room 33 to the last office on the left just before one reached the inside entrance to Court Room 34.

As you enter this office, there is a full washroom on your left, beyond which the office portion of the room with undraped windows on the north is reached.

The constriction caused by the provision of washroom facilities makes a sort of vestibule or entrance-way into the office.

The office is furnished with a desk, one or two small tables, a big swivel chair, several other ordinary chairs and places for books.

The easterly wall of this office separates it from Court Room 34 and the westerly wall separates it from Judge Taylor's private office.

The entrance, as I have indicated, is in the south wall of the office, the washroom being located in the south-west corner.

P.W. Watson says that she was in plain clothes, i.e. ordinary non-uniform clothes, that day, wearing a double-breasted green overcoat over her dress. She was standing in the main public corridor, her left shoulder and side being adjacent to the westerly door jamb of the entrance to the narrow hallway above described, at about 12:30 p.m. on the 15th. November 1968. Her own sworn testimony as to what happened thereafter should be recorded.

(Vol. I, p. 23, line 15 - p. 24, line 40)

“Q. On the 15th. Well then, Policewoman Watson, will you tell us, in your own words, what happened immediately after approximately 12.30 when you are standing there, were you smoking or what were you doing? A. I had had a cigarette

and I was just putting it out and I was standing up against the doorway with my shoulder up against the door jamb in the main hall.

Q. Yes? **A.** I had my hand down at my side, my left hand.

Q. Yes? **A.** When I felt somebody take a hold of my hand. I turned and I saw a man dressed in judicial robes, now known to me as Magistrate Kurata.

Q. I see. Well, you saw a man dressed in judicial robes, you recognized those as robes of a magistrate at that time? **A.** Yes, sir.

Q. I see. Did you know who he was apart from recognizing him dressed as a magistrate at that time? **A.** No sir.

Q. I see. Do you see that man in court here today? **A.** Yes, sir, I do.

Q. Yes, where is he? **A.** Magistrate Kurata sitting right here.

Q. You are pointing to the table behind counsel for Judge Kurata, where there are three men. Which one? **A.** The gentleman wearing the glasses.

Q. Identifying Judge Kurata. How were you dressed, were you in uniform or plainclothes? **A.** No sir, I was in plainclothes.

Q. I see. Did you have a coat on? **A.** Yes, I did.

Q. And what sort of coat? **A.** I had a green coat which was double-breasted.

Q. Yes. Green, double-breasted, that is, I take it, with the buttons you mean on either side? **A.** On both sides.

Q. Yes. Well patently not the coat you are wearing? **A.** No, sir, this is a suit.

Q. Oh, I beg your pardon, I didn't learn as much as I thought I should from matrimony.

Do you have a coat here today? **A.** Yes, sir.

Q. If necessary, thank you.

Then after you felt the man touch your hand, what took place next? **A.** I turned to see who had a hold of my hand and he said, 'Come on down here'.

Q. Who said that? **A.** Magistrate Kurata.

Q. Yes? **A.** And we walked—

Q. He said 'Come down here'. Anything else said at that time? **A.** 'I want to talk to you. Come down here.'

Q. I see. And what did he do and what did you do? **A.** He had a hold of my hand. I walked through the doorway. He was in front of me still holding my hand.

Q. Yes. When you say 'holding' your hand, anything particularly significant about that or not? A. No, sir.

Q. And so what did he start to do? A. Walked through the alcove in the picture.

Q. Yes, Through the entrance from the hall to the corridor appearing in 3A. Yes? A. And we proceeded to walk east.

Q. Yes? A. And as we were going down the hall he asked what my name was and I said it was 'P.W. Watson'.

Q. Yes, did you take any objection to the then magistrate holding your hand or say anything to him as you went down the corridor? A. No, sir.

Q. Yes. Why not? A. There didn't seem to be anything improper about it."

(Vol. I, p. 25 line 32 to p. 26 line 22)

"Q. So you were walking along with the then magistrate who had said 'Come with me, I want to talk to you', walking along that corridor, going east, what happened, in your own language, after that as you were walking down there, tell me about that? A. He asked me my name. I told him it was 'P.W. Watson', as we were walking down the hall. As we were walking down the hall we came to a door with a glass front.

Q. Yes? A. He said, 'Let's go in here'. He stepped in front and opened the door and let me walk in first.

Q. I see. Was he still holding your hand or let go of your hand? A. He had let go of my hand.

Q. And he opened the door? A. He opened the door.

Q. Yes. And did you walk, did you step in? A. I stepped in to the office.

Q. I see. How far did you step in the office? A. About three steps.

Q. Yes, about three steps into the office? A. Into the office.

Q. I see, and then what happened next? A. I stepped into the office and I hadn't—he hadn't said anything, so I turned around to see—

Q. Yes? A. —where he was, and he was at the door. The door was shut and his hand was on the bolt.

Q. I see. A. Of the door.

Q. I see. Did you know from your observations as to whether he had bolted the door or not or just that you saw his hand? A. I saw his hands up on the bolt.

Q. Yes. Well, I take it you didn't know whether he was locking the door, had locked the door or not, but you saw his hand on the bolt? A. I saw his hand on the bolt.

(Vol. I, p. 26 line 46 to p. 27 line 35)

"MR. FORD: Q. I show you, Policewoman Barron (sic) or Watson, I beg your pardon, Exhibit 3-O, which has been described as a photograph of the then Magistrate Kurata's chambers looking from the door into the chambers, looking north. Do you recognize that as the room that you were walking into or not? A. I don't recognize the furniture, it looks like the same doorway and the wall space.

Q. Well, speaking of the entrance, it looks like the same entrance that you stepped into and the magistrate behind you? A. Yes.

Q. I see. You will notice that on the right hand side of the forefront of this picture I am indicating 'Provincial Judges Private', you have told us that when you came to that door it was closed with a glass in the door, with something on it, did you notice what was on it at that time? A. No, I noticed there was writing, but I didn't notice what it said.

Q. Yes. Then in 3-O we have in the forefront of the picture, and I am indicating to the witness the area not covered by a carpet, a sort of entrance into the chambers with a door inside to the left, do you recognize that area? A. Yes.

Q. And when you say that you stepped in about three steps, about how far had you got into the chambers or office when you looked around and saw Judge Kurata closing the door with his hand to the lock? A. There is a washroom on the left side and I was on this side of the washroom.

Q. Well now, 'this side' meaning as you walk in with the washroom on the left, patently somewhere to the right of the washroom as you walk in, is that what you mean? A. Yes, the washroom—

Q. Washroom to the left as you go in? A. Yes.

Q. And you were somewhat to the right of that washroom in this sort of little hallway that hasn't got a carpet on it, is that right? A. Yes."

(Vol. I, p. 28 line 11 - p. 29 line 3)

"MR. FORD: Q. Then going back to your evidence of what took place, Policewoman, you had gotten to the stage of telling us that you took a few steps, I think three, in to the office, looked back, and saw Judge Kurata at the door with his hand on the lock. Now, what, in your own language, took place after that? A. When I was turning he had his hand on the door and he started to walk towards to me, so I turned my head back, I was looking out a window, when he came up behind me and put his right hand over my shoulder.

Q. Which shoulder? A. Over—

Q. Indicating your right shoulder? A. Right shoulder.

Q. Yes. A. And his left hand down at the bottom level to where my buttons on my coat come.

Q. Which side? A. On my left side.

Q. Pardon? A. On my left side.

Q. Your front, left side, the lower area where your buttons were, yes? A. He said, 'We have got time. Your court case won't be called for a while.' And as he was putting his hand over my shoulder he said this.

Q. Yes? A. And his hand went back up and doing so he touched my breast on the way back.

Q. I see. And what, if anything, did you do as he was doing that? A. My shoulder sort of went up and my hands.

Q. You are indicating raising? A. Right.

Q. Right shoulder. And hand, yes, and what happened after that? A. He stepped away.

Q. Yes? A. And then he hadn't said anything, so I turned around and when I turned around he was coming, appeared to be stepping out of the washroom.

Q. Yes. Appeared to be stepping out of the washroom. Do you know whether he had been in the washroom or not from your observations? A. I couldn't say if he had been or not.

Q. Yes. Stepping from the area of the entrance to the washroom? A. Yes.

Q. Yes. Towards you? A. Towards we."

(Vol. I, p. 30 line 33 - p. 32 line 24)

"Q. Yes. And as you saw magistrate, then Magistrate Kurata, stepping from the entrance to the washroom towards you, what, if anything, was said or took place immediately after that? A. He said, 'Oh, you are not undressing'.

Q. Say anything else? A. And then as he was saying that, he was walking, he was coming from behind me, walking around to face me.

Q. Yes? A. And then he said that he was talking to the girl down the hall and had arranged for a suspended sentence for her.

Q. Yes? A. And I stepped back and said, 'Just a moment, you have got me confused. I am a policewoman.'

Q. Yes? A. And with that the expression on his face changed.

Q. When you say it 'changed' what do you mean by that? A. Well, he sort of had a smile on his face but it just changed, just disappeared.

Q. The smile disappeared? **A.** Yes.

Q. And what, if anything, was said by the then magistrate to yourself after that? **A.** He said, 'Well, any time you want to come down to discuss a court case or suggest a sentence, come and see me.'

We were sort of walking back towards the door and he asked me what court I was in and I said 'Magistrate Bolsby's court'. He said, 'He is a good magistrate.'

Q. Yes? **A.** And I made some comment and we walked to the door, sort of side-stepping with each other, and he unlatched the door, had been unbolted, and he opened the door.

Q. Yes? **A.** Then I walked back out the door, down the same corridor, and back to where I was standing.

Q. Back to where you had been standing? **A.** Yes.

Q. You are indicating where you marked with an 'X' Exhibit 3A, that is outside 33 near the entrance to the corridor? **A.** Yes, sir.

Q. In about that area? **A.** Yes.

Q. What took place immediately after that, after you had gone back to that area outside 33 in the entrance to that corridor? **A.** I was standing back out there and Detective Moclair, now known to me as a P.C., was standing at that doorway, just inside.

Q. Now, you say 'that doorway' indicating what doorway? **A.** The doorway that I had walked down through, down the hall.

Q. The doorway from the hall into the corridor? **A.** Into the corridor.

Q. I see. You said 'P.C. Moclair', did you know him by name at that time? **A.** I have seen him around, I thought he was a detective at the time.

Q. In uniform or plainclothes? **A.** Plainclothes.

Q. I see. Did you know his name at that time? **A.** Yes.

Q. You thought he was a detective but it turned out he is a police constable? **A.** Yes.

Q. I see. His name is spelled M-o-c-l-a-i-r? **A.** I don't know the spelling.

Q. And what, if anything, did you hear then? **A.** I heard a voice saying, 'Boy, that is a sharp P.W. Is she a policewoman.', and I turned my head and it was Magistrate Kurata on the other side of the entrance going down the small hall.

Q. That is on the other side of the entrance to the corridor? **A.** Yes.

Q. Yes, and who did he appear to be speaking to? **A.** There was a man that I don't know standing in the little hallway.

Q. In the corridor, you mean? **A.** Yes.

Q. Yes? A. And also P.C. Moclair and at this time he was saying this and trying to light a cigarette and his hands were shaking quite noticeably.

Q. He appeared to be speaking to Moclair and to another man, I take it you don't know who he was? A. No, sir.

Q. You didn't know then and you don't know now? A. No."

(Vol. I p. 35, lines 34-41)

"MR. FORD: Policewoman Watson, I was about to ask you, immediately after you heard that comment, you looked around, as you have told us, and the magistrate, you said, moved back, that is east, in the corridor? A. Yes.

Q. And what if anything did you do? A. And then I turned to P.C. Moclair and I said to him, 'Who's that guy, is he on the level?'

(Vol. I, p. 36 lines 22-47)

"Q. So you asked P.C. Moclair if that guy was—what did you say? A. 'Who's that guy, is he on the level?'

Q. Yes, well, what else did you ask him? A. He told me his name was Magistrate Kurata.

Q. Yes? A. And I had to ask him to repeat it.

Q. Yes, and what if anything did you tell P.C. Moclair? A. Then I went on to explain to him what had occurred.

Q. I see. Do you remember the details of that? A. No, sir.

Q. Anything apart from that general statement, anything particular as to about the magistrate, and your meeting with him in there? A. I told him he had taken me for a prostitute.

Q. Yes, but you don't recall what else you told him? A. No sir.

Q. All right then. How were you feeling at this time, after this episode? A. Pretty shaky.

Q. Was the then magistrate there when you were speaking to P.C. Moclair? A. No sir.

Q. He had walked down, as you told us, east, down the corridor? A. Yes sir."

(Vol. I, p. 37 lines 8-12)

"MR. FORD: Q. And what took place then after that conversation with Moclair? What did you do then? A. P.C. Moclair had to go to another courtroom, so I walked over to the bench, which is one of the benches in the—outside of 33 Court."

(Vol. I, p. 37 lines 27-39)

"MR. FORD: Yes. And what did you do? A. I sat down and lit a cigarette and took a puff out, and then I was trying to

stop shaking, and then I put it out and there was a phone booth right opposite the bench and I went to the phone booth and phoned my office and asked for the inspector, but she was not in.

Q. Well, you were not able to reach her; following that, what if anything did you do? A. And then I phoned P.W. Barron.

Q. I see, and who is P.W. Barron? A. She is Policewoman Joan Barron who works out of Intelligence.

Q. Yes? You knew her, I take it? A. Yes sir."

(Vol. I, p. 38 line 1 - p. 39 line 42)

"Q. When you phoned P.W. Barron, what if anything did you say? A. I said to her I had to talk to her, would she come over and see me, I was at court.

Q. Yes? A. And she said she would come over.

Q. Yes? A. I then went back to the bench.

Q. And as I understand it, that was the nature of the conversation, is that correct, on the phone? A. Yes, sir, on the phone.

Q. And did she come down? A. Yes sir.

Q. And about how much later? A. Just shortly after, about 12.50, ten to one, in there.

Q. Yes, and where did you remain waiting for P.W. Barron? A. I went back and sat at the bench, and then I lit another cigarette, and as I was sitting there Magistrate Kurata came back over to the bench where I was sitting and asked me if I liked being a policewoman, and did I work out of Morality, and I told him I did not work out of Morality.

Q. Did you in fact work out of Morality? A. No sir.

Q. And have you ever worked out of Morality? A. On one occasion.

Q. On loan to them from your division? A. Yes sir.

THE COMMISSIONER: Is that a separate subdivision of the police department? A. Yes, it is a separate unit.

Q. What is it known as, the Morality Squad? A. The Morality Squad.

Q. Colloquially? A. Yes.

Q. That is what it is known as? A. Yes sir.

MR. FORD: Now, did you have any further conversation then with the then magistrate at that time? A. No sir, he then walked away.

Q. And this was before Policewoman Barron came down? A. Yes sir.

Q. And then did Policewoman Barron arrive? A. Yes, she did.

Q. Yes, I think you told us about 12.50 or ten to one? A. Yes.

Q. And had your case been recessed or had you been called yet, by the way? A. No sir.

Q. And then after Policewoman Barron arrived, did you again see the magistrate? A. Yes sir.

MR. MALONEY: I do not want to interrupt, but I think my friend should try and refrain from leading, when he gets to a kind of vital part.

MR. FORD: I will.

THE COMMISSIONER: Is there some controversy about this aspect of it, Mr. Maloney?

MR. MALONEY: Well, yes, there is.

MR. COMMISSIONER: All right.

MR. FORD: Q. P.W. Barron arrived? A. Yes, she did.

Q. Did you or did you not see the magistrate again after that? A. Yes, we did.

Q. We being? A. Both P.W. Barron and myself.

Q. And about how long after she arrived was it when you saw him? A. She had come in and come over to me on the bench, and I just started to tell her what had happened, and Magistrate Kurata passed us in the hall.

Q. Yes? A. And then I sort of lost him for a moment, and went to start again, and he passed us again.

MR. MALONEY: Excuse me, but would you please just slow down? You started to tell her what happened and he passed—?

MR. FORD: Yes, you just started to tell her what had happened when Magistrate Kurata passed you? A. Yes.

Q. And then you started again, and he passed you again? A. Yes.

Q. And was he walking in the same or different direction? A. He came from one direction and the next time he came back from another direction."

(Vol. I, p. 40, lines 18-46)

"Q. In the hall, apart from what you have told us, did you have any further conversation with P.W. Barron? A. No, we didn't, we left the court, my courtroom had been recessed for lunch, and we went across to Eaton's.

Q. And in Eaton's what conversation, if any, did you have relative to the matters we are investigating, with Policewoman Barron? A. I explained to her what had happened in Magistrate Kurata's office.

Q. Yes, and do you recall the details as you gave them to her? A. I don't recall the exact detail I told her.

Q. As a result of telling her what had happened in Magistrate Kurata's office, what if anything did you do? A. She said she

would try and get a hold of our inspector, because I had to go back to court, my court was still going on.

Q. That was Inspector Alexander? **A.** Yes.

Q. You had to go back to court in the afternoon? **A.** Yes.

Q. Yes? **A.** And I finished my court, and then I went to headquarters, where I was to report for duty for the afternoon shift.

Q. Yes? **A.** And at this time I saw our Inspector Alexander, and they typed up a letter to the Inspector.

THE COMMISSIONER: Where are your headquarters, Mrs. Watson? **A.** At 590 Jarvis, my Lord."

(Vol. I, p. 41, lines 7-8)

"**Q.** A typed report was prepared. Did you type it? **A.** No sir."

(Vol. I, p. 41, lines 13-24)

"**MR. FORD:** Yes, certainly. Who typed it? **A.** P.W. Barron typed it, we were in an office with a closed door just the two of us.

Q. And who prepared it while she typed? **A.** I told her what had happened, trying to straighten out everything that happened, and she would type it.

Q. And after she had typed it, did you sign it? **A.** Yes sir.

Q. And this was addressed to your—? **A.** Inspector.

Q. To your senior officer, Inspector Alexander? **A.** Yes sir."

(Vol. I, p. 41, line 28 - p. 43 line 31.)

"**Q.** You referred in your evidence to sitting on a bench, after you came out of the then Magistrate Kurata's chambers, is it one of the two benches shown in Exhibit 3A? **A.** Yes sir.

Q. Do you recall which one? **A.** No sir. **Q.** I see. One of the two? **A.** One of the two.

Q. Yes, and then later you went to sit on a bench waiting for Policewoman Barron, do you recall which one? **A.** I believe it might be the second one.

THE COMMISSIONER: The one nearer to the photographer or the one further away? **A.** Nearest to the photographer.

Q. Nearest to the photographer.

MR. FORD: **Q.** And nearest to us? **A.** Yes.

Q. And do you recall which bench you were sitting on when you and Policewoman Barron came and when you both saw the magistrate? **A.** I think it was on the same one, because the ashtray is there.

MR. FORD: Yes, indicating the big one between the two benches, you think it was between the— A. It is closer to the one bench, actually.

THE COMMISSIONER: Would you show the witness that same exhibit again, Mr. Ford?

MR. FORD: Yes, my Lord.

THE COMMISSIONER: Q. You referred to the telephone booth that you went to. Does it appear in photograph Exhibit 3A? A. Yes, my Lord.

Q. That is the one across the corridor from the benches? A. Yes, my Lord.

MR. FORD: Q. And when, as you told us, that you and Policewoman Barron were sitting on the bench, you think the one closest to the photographer, and the then Magistrate walked past you, and then walked past again, in what particular area—can you see it in this photograph about where he was walking one way, and then the other way? A. He appeared the first time coming from in this area somewhere, I cannot say where he came from.

Q. From what area? A. In and around here somewhere.

THE COMMISSIONER: Would you describe where the witness is indicating, Mr. Ford?

MR. FORD: Yes, the witness is indicating the area just north of the phone booth, being part of the main hall that runs east, and the area in front of the entrance to the corridor, and just south of that.

Q. Is that the area you are talking about? A. He could have come from any of that direction.

Q. You don't know whether he came from the entrance of the corridor or from the area just east of and north of the phone booth? A. No, I don't.

Q. In the main hall, and about how far did he walk from that general area before he came back the other way? A. He walked past us.

Q. Past the benches? A. Yes.

Q. And then back again in the reverse direction? A. Yes.

Q. And do you know whether he, on the second occasion, he went through the corridor and went into the main hall, just east of the corridor and north of the phone booth? Do you know? A. No, he passed us again, and then went to the elevators.

Q. I see. I beg your pardon, and on the second occasion when he passed you, the second occasion he passed you, instead of going back he was coming south toward the direction of the elevators? A. Yes.

Q. Did he still have his judicial robes on at that time? A. Yes sir, he did."

The cross-examination of Mrs. Watson was of course intended to shake her credibility. I propose to deal with each point of attack as it was made by counsel for Judge Kurata.

(I) Her evidence that her first knowledge of Judge Kurata's presence was when someone took her hand:— the following questions and answers were given under cross-examination:—

(*Vol. I, p. 52, line 38 to line 45*)

“**Q.** And the very first recollection you have of your encounter with Judge Kurata was you felt somebody touch your hand, you turned around, and there he was? **A.** Yes.

Q. You didn't know where he came from? **A.** No.

Q. You didn't see him come from anywhere? **A.** No.

(*Vol. I, p. 53, line 34 to line 40*)

“**Q.** I see. Well, now, you have told us about the written report that you caused or helped to prepare when you went back to the police headquarters later that afternoon. Do you remember that? **A.** Yes, sir.

Q. And you dictated a report and its typing was done by Policewoman Barron? **A.** Yes, sir.”

(*Vol. I, p. 54 line 28 - p. 55 line 28*)

“**Q.** Yes, **A.** ‘At approximately 12.35 p.m. I was standing near the doorway to the courtroom, smoking a cigarette. Two females, whom I know as prostitutes, were sitting on the bench nearby. I observed a man I now know as Magistrate Kurata, come from the hallway. I had never seen this man before, I knew he was a Magistrate from his Judicial robes, but did not know his name. The Magistrate came directly to me, and took my left hand and said, “Come down here, I want to talk to you”. I assumed he had recognized me as a Policewoman, and wanted to talk to me about a case.’

Q. Now, in that paragraph you have stated, in your report, that Magistrate Kurata came directly at you and that he came from the hallway. Just a little while ago you swore on oath here that the first knowledge of his whereabouts was when you felt somebody touch your hand? **A.** Yes.

Q. How do you explain the difference between those two statements? Which is correct? **A.** What I said today and at the, the private—I was typing this up, I was trying to remember what happened, my mind wasn't clear, it was very confused—

Q. Your mind was very confused, it wasn't clear? Is that correct? **A.** Yes.

Q. And do you now say that what you said in paragraph 3 of your report is not correct?

MR. FORD: I take it my friend is directing the witness to one part of it?

THE COMMISSIONER: I understand he is directing her attention to the question as to where Magistrate Kurata came from and where she first saw him.

MR. MALONEY: He came directly at her, came from the hallway, 'came directly to me', took your hand, and you say that is incorrect? A. Yes.

Q. That is wrong? A. Yes.

Q. Is that right? And why would you have so freshly after the happening of this occurrence, how is it possible you could have made that mistake? A. Because when I was trying to tell, tell what happened, I was upset, I couldn't get things quite straight. I was, had a terrible headache and I was just shaking."

(2) Her evidence with respect to any physical contact with Judge Kurata:— the following questions and answers were given under cross-examination:—

(*Vol. I, line 12 - p. 60*)

"Q. In the light of the experience you have had as a police-woman, particularly the experience you had in August of '68, you were familiar with what is or what is not an indecent assault. You know the difference between an indecent assault and an innocent touching of a person? A. Yes.

Q. I mean not only have you had the practical experience you have described to us, but you study this, a policewoman, don't you, what are the characteristics of indecent assault? A. No, sir.

Q. Don't you need to know that for the purposes of carrying out your investigations? A. No, sir.

Q. But your description of the actions of Judge Kurata in his chambers when he put his right hand over your shoulder struck me as being innocent, do you see anything sinister about those actions? A. Not at that time, no.

Q. Was there anything about them that was out of the ordinary as far as you could see what his right hand did? A. Not at the time.

Q. Well, let's see. What did he do exactly? He put his right hand over your right shoulder? A. Over my right shoulder.

Q. Yes, and I think on an earlier occasion you described that his, the inside of his right wrist, brushed lightly against the upper part of your body, would that be a fair way to put it? A. It would be this, the flat part here.

Q. The bottom part of his wrist, you say. All right. A. Yes.

Q. Just describe it. Put the bottom of your wrist up against your upper body and demonstrate to us what it was he did. A. My hand?

Q. Yes. A. It rubbed.

Q. Yes, let's see that again? A. Like, you know, like that.

Q. His hand, I don't know whether I described this accurately for the record, you will correct me I am sure if I am wrong, he put up—you put up your right hand, the fingers are pointing downwards— A. I don't know if his fingers were pointing downwards.

MR. MALONEY: Well, I am just describing her operations.

THE COMMISSIONER: One would have to be a contortionist to do this herself.

MR. MALONEY: Well—

THE COMMISSIONER: So what is the point of describing it for the record?

MR. MALONEY: Maybe we could have a lady, maybe one of the policewomen come up, she could demonstrate to the police-woman how it was done.

THE COMMISSIONER: Let Policewoman Watson demonstrate on the matron.

MR. MALONEY: I beg your pardon?

THE COMMISSIONER: Let Policewoman Watson demonstrate on the matron as to her reaction.

MR. MALONEY: A matron of the court has come forward and Policewoman Watson is going to put herself in the position that Judge Kurata was in.

THE COMMISSIONER: Make them stand up on the witness box.

MR. MALONEY: Q. I would like you to just put your right arm over the matron's right shoulder and do what you say Judge Kurata did. A. I'm not quite sure what he done, I know he touched—

THE COMMISSIONER: What you saw and felt, that is all you can do, Mrs. Watson.

MR. MALONEY: Q. Sort of—his arm sort of descended over, thank you Matron.

THE COMMISSIONER: Just a moment now. What I observed, for the record, was the right arm extending forward, over the body of the police matron who was good enough to come forward to assist in the demonstration, extending from the elbow forward of the shoulder line and then drawn back lightly over the shoulder.

MR. MALONEY: Yes.

THE COMMISSIONER: That is what I observed. That is a correct description? That is what you saw?

MR. MALONEY: That would be a very accurate description as I see it, thank you.

All right now, well, that just confirms what I said to you a few minutes ago, there was nothing indecent about it at all, was there? A. I didn't think there was at that time.

Q. No, and there was nothing, there was nothing about it, nothing about that single action that would have shocked you or amazed you, is there? A. Not at that time.

Q. No? A. No.

Q. For example, if he had rested his hand on your bosom would you have remembered that? A. Probably.

Q. Why? Why would you remember a thing like that? A. It is something you don't usually expect to happen.

Q. What would be so shocking about it that you would remember? A. In what—

Q. What would be so shocking about the fact that somebody put his hand and rested it, rested his hand on your bosom, what would be so shocking about that that you would remember? A. Wouldn't like it to begin with.

Q. Well, it would be an indecent assault, wouldn't it? A. It could be.

Q. And if Judge Kurata had done that to you you never would have forgotten it, would you? A. No.

Q. Here he is, a Judge of the Provincial Court, you are a woman in his office, and if he were to rest his hand on your bosom that would be so shocking an experience you would never forget it, isn't that right? A. Not when somebody is helping you with your coat off it could have been accidental.

Q. Oh, you mean somebody could rest his hand on your right bosom while he was helping you off with your coat? A. Quite by accident, yes.

Q. I see. You think then it would be possible for somebody to do that and do it accidentally, is that right? A. Could be.

Q. Did Judge Kurata rest his hand on your right bosom? A. It brushed.

Q. Did Kurata rest his hand, his right hand, on your right bosom? A. I don't think it was resting, no.

Q. If I were to—or if someone were to say that Judge Kurata rested his right hand on your right bosom that would not be right, would it? A. Not resting.

Q. No, and indeed if he had you would never forget it, I think you said. A. No, I don't think I would.

Q. Of course you know what I am leading up to, don't you?
A. Yes, I do.

Q. The reason you know what I am leading up to is because we went over all this before, before the Judicial Council before Christmas, didn't we? **A.** Yes, sir.

Q. Because you will look again at your original report and this time I am looking at the fifth paragraph the last paragraph on page 1, and you say there:

'He let go of my hand when we entered and was behind me, gently pushing me into the room. He hand was over my right shoulder, and it was resting on my right bosom. His left hand was around my waist and he was attempting to undo my coat buttons.'

How do you explain the difference in your evidence? **A.** I think I used the wrong choice of words.

Q. You think you used the wrong choice of words. If you had it to do all over again what choice of words would you use? **A.** Brushing.

Q. Well, am I to take it then that the accusation that you have put in the report you made on the afternoon of November the 15th, in that he rested his hand on your right bosom, is not true? **A.** It is what?

Q. My question is simple, clear and plain. **A.** I wouldn't say.

Q. Pardon, what is your difficulty? **A.** I thought I understood and then I—

Q. Pardon? **A.** Could you please repeat it?

Q. I am asking you if the suggestion contained in this report filed as Exhibit 5 that Judge Kurata rested his hand on your right bosom, if that is untrue? **A.** I wouldn't say it was untrue.

Q. You wouldn't say it is untrue, you gave a demonstration which was described for the record and do you say that the demonstration you gave could honestly be described as an operation in which Judge Kurata rested his hand on your right bosom? **A.** Maybe I didn't demonstrate right.

Q. He did nothing of the sort, I put it to you, witness, he didn't put his right hand on your bosom or any hand anywhere? **A.** Yes, he did.

Q. What is your reason for using that language in the original report? Why did you say he rested his hand on your right bosom?

MR. FORD: It was 'resting'.

MR. MALONEY: The hand she is talking about.

MR. FORD: Yes, it was 'resting'.

MR. MALONEY: Q. How do you explain your reason for using that language? A. You mean the second line in?

Q. Pardon? I am asking you how do you explain your description of Judge Kurata that his hand was over your right shoulder and was resting on your right bosom? Why do you say that? A. Because he did not touch me.

Q. But he didn't put his hand on your right bosom. We saw you demonstrate it, we saw you demonstrate it.

THE COMMISSIONER: I think if you will keep with the word 'rest', rather than 'put', Mr. Maloney.

MR. MALONEY: That is right, if I have used the word 'put' I have grossly understated the thing.

THE COMMISSIONER: That is what the witness was endeavouring to relate to your question.

MR. MALONEY: All I am trying to find out from you is why did you use the word 'resting on my right bosom' in your report? A. I don't really know why I said 'resting'.

Q. Because maybe it is because, is it you were upset again? A. Yes, I was upset.

Q. Is that why you used the word 'resting'? A. Could have been.

Q. Well certainly the way you describe it there is nothing about it that would shock you, that part of the operation, is there? A. Not just that part alone."

(3) As to whether Judge Kurata had actually been in his washroom before approaching her from behind: the following questions and answers were given under cross-examination:—

(Vol. I p. 66 line 2 - p. 67 line 27)

“Q. How about the washroom? I understood from your evidence this morning you couldn't say whether he went into the washroom or not. A. No, I couldn't.

Q. You never saw him go in? A. I didn't see him go in.

Q. You certainly would have been aware of it if he used the facilities of the washroom, wouldn't you, you would have heard him run the tap or flush the toilet, wouldn't you have heard those things from where you were? A. I probably would have heard them.

Q. You didn't hear anything of the sort? A. No.

Q. You are not in a position to say he went into the washroom at all, are you? A. Not directly into the washroom, no.

Q. What do you mean 'not directly into the washroom'? Was he in the washroom or wasn't he? Or do you know? A. I saw him come from that direction, I never said he was in the washroom.

Q. When you saw him come from the direction, was he coming out of the washroom or coming away from the door in the hallway outside the washroom? A. No, he—one foot was sort of outside the washroom and one foot was sort of back a bit, at the door of the washroom.

Q. Not in the washroom? A. One foot was just inside the door and the other foot was just outside the door.

Q. Well, there was nothing about that part of the incident that was unusual. He didn't go into the washroom and then come out undressed or anything of that sort? A. No.

Q. Now, just look at Exhibit 5 again, your original report, you say there, in the last paragraph, about half-way through that paragraph:

'He—'

—talking about Judge Kurata:

'—then walked into the washroom, that was just off from the office, and when he returned a short time later, he said, "Oh, you're not undressing?".'

You see that? A. Yes.

Q. This is your original report made a few hours after this incident, isn't that right? A. Yes.

Q. This written report is something the details of which you had already communicated to Policewoman Barron most of it over lunch, is that fair? A. Parts of it, yes.

Q. Well, this part of it? A. I can't remember if I told her over lunch or after.

Q. Did you tell her any time before this thing was committed to writing? Did you tell Policewoman Barron at any time about the fact he had gone into the washroom and came out a short time later? A. I honestly don't remember saying it.

Q. You don't remember saying it, because, am I right in stating that your recollection of what happened now insofar as the washroom is concerned, is that you never saw him in the washroom or come out of the washroom? A. I saw him come from the direction—

Q. That is right. A. —of the washroom.

Q. And you have described that one of his feet, I suppose his left foot, was in the doorway of the washroom, is that right? A. One of them was.

Q. Yes, and the other one was out in the hallway? A. Just a step in front."

(4) As to telling P. W. Barron that she had never looked anywhere except at Judge Kurata's face as he appeared to be leaving the entrance to the washroom, the following questions

and answers effectively summarize her evidence in cross-examination on this point:—

(*Vol. I, p. 73 lines 10-14*)

“MR. MALONEY: Q. I want to know, did you say to Police-woman Barron that you would look nowhere but his face, and that you were afraid to look anywhere else? A. I remember saying I did not look anywhere but his face, but I don’t remember saying anything else.”

(5) As to attempting to undo her coat buttons, the following passages of evidence under cross-examination deal with this matter:—

(*Vol. I, p. 73 line 15 - page 74 line 23*)

“Q. Did he ever at any time undo your buttons or any button on your coat? A. Not that I know of.

Q. Oh? A. A button was undone, but I could not swear that—

Q. Well, look at Exhibit 5 again, let us go back to this again, the last paragraph on page 1, about the third sentence, ‘His left hand was around my waist and he was attempting to undo my coat buttons.’ What do you mean by that?

THE COMMISSIONER: Well, that is very different from what you just put to her. You put to her the question, ‘Did he ever undo your buttons’ and now you read something very different.

MR. MALONEY: Well, I submit you are being very technical, and this is cross-examination.

THE COMMISSIONER: I am going to be just as technical as you are, and you are going to put it accurately.

MR. MALONEY: I am entitled to cross-examine this witness.

THE COMMISSIONER: But you are not entitled to put different questions and ask her to explain something.

MR. MALONEY: Perhaps the reporter could read back that question?

THE COMMISSIONER: I have just quoted it to you.

MR. MALONEY: I would like to have the question, if I may.

THE COMMISSIONER: Mr. Maloney, I have just quoted it to you: ‘Did he ever at any time undo your buttons or any button on your coat’, and you read something else.

MR. MALONEY: Did he ever undo your buttons? A. No.

Q. Did he ever attempt to undo your buttons? A. His hands were at my button, and I had a button undone, but I cannot swear he undone it.

Q. Why do you say in your report, 'He was attempting to undo my coat buttons'? A. Because that is where his hands were, at my button, and I had a button undone.

Q. That is not correct then to say attempted to undo your coat buttons? A. I said I did not know that he undone it, it was undone, but I could not swear that he undone it.

Q. You did not even know he attempted to undo it? A. His hands were at the bottom where my buttons come on my coat."

(6) As to references to Magistrate Bolsby. Exhibit 5, which is P. W. Watson's written report to Inspector Alexander, made the 15th. November 1968, says this:—

"—when he mentioned undressing, I said, Just a minute, I think you've got me confused, I said 'I'm a Policewoman.' His expression changed considerably, and he said, 'Well, if you ever have any cases you want to talk over, or a case that you want to suggest a sentence, come and see me. He mentioned that Magistrate Bolsby was a good Magistrate and I made some comment. We went to the door, he unbolted it, and we went out into the hallway."

This passage from Exhibit 5 was *not* put to the witness by cross-examining counsel. Instead the whole subject of Magistrate Bolsby which of course had to be dealt with because of the written report was handled by counsel for Judge Kurata in this way.

(Vol. I p. 74 line 24 - p. 76 line 8)

Q. Now, you were going to give evidence in Courtroom 33?
A. Yes sir. Before Judge Bolsby.

Q. Had you ever appeared before Judge Bolsby before?
A. Yes, I had.

Q. Had you ever appeared before him in a case in which you were sort of in the role of a decoy, that is to say, the sort of role you were playing in the Zorratto case—I am sorry, I did not mean to name that accused, his name should not have been brought in, it was brought in advertently, and I would suggest that the press refrain from mentioning it—in any event you were giving evidence before Magistrate Bolsby on November 15, it was a case in which you were a complainant in a charge of indecent assault at the Exhibition? A. Not a decoy. No sir.

Q. What was your role? A. We were down there to observe purse-snatching and seeing that the games were being properly played, for thefts and for pilfering at the games, there were some indecent assaults going on, but that was just not our purpose, we were mingling in with the crowd to observe.

Q. You were not deliberately placing yourself in the position of seeing whether this particular accused was perpetrating an indecent assault on you. **A.** No sir.

Q. What was it you did, what happened? **A.** On this particular occasion?

Q. Yes, on the occasion—in the case with respect to the evidence you were going to give on November the 15th? **A.** I am trying to remember.

Q. Yes. I thought you testified that you saw some sort of indecent action, or what you thought was indecent action, involving a young girl and you went and stood in front of the accused man, and that he then assaulted you—

MR. FORD: Where is that—to help me?

THE COMMISSIONER: You are asking her about the testimony she gave at this other trial?

MR. MALONEY: Yes. I thought you went there for the purpose—at least to put yourself in the position you were in for the purpose of seeing if he would perpetrate an indecent assault. **A.** No, we were watching this happen, we were in a crowd where he was indecently assaulting a young girl, and we were watching him, and we were participating in a game so that we could see him and not look like we were watching him, but he moved to a woman beside me, and got in behind me.

Q. I may be wrong in my recollection of it. I see, you got in between him and the girl, and you started to play the game and he got behind you—I thought you deliberately got in that position to see if he would assault you? **A.** No, that was a young six-year-old girl he had pinned up against the wall and in order to release her, we had to move in between him, to get the little girl out.

Q. Had you ever given evidence in an indecent assault case before Judge Bolsby? **A.** I have been in his court, I have been in his court for abduction—I cannot remember.

Q. I suggest to you you asked Judge Kurata—at least you told Judge Kurata on November 15 you had a case coming up before Judge Bolsby—or Magistrate Bolsby, as he then was, and you wanted to know what kind of a magistrate he was? **A.** No sir.

Q. You deny that? **A.** Yes sir.

Q. And that when you said that to him, Magistrate Kurata said, 'Magistrate Bolsby is a good man', or 'A good magistrate'? **A.** No sir.

Q. I suggest to you that that is all that happened in Judge Kurata's office? **A.** No sir.

Q. And I suggest to you, witness, the evidence you have given here is untrue? **A.** No, it is not, sir."

Evidence of Police Constable Thomas Anthony Moclair

(Transcript Vol. II pp. 77-98)

Constable Moclair has served on the Metropolitan Toronto Police Force for twelve and a half years. At all material times he was a plainclothes officer attached to No. 52 Division, located at 149 College Street, Toronto.

In the forenoon of Friday 15th November 1968 Constable Moclair was standing in the corridor outside Court Room 33, Old City Hall, waiting to be called to give testimony. He had been there from about 10:00 a.m. He knew Policewoman Watson to see but did not know her name. He was well acquainted with Judge Kurata and he saw both of them on that morning as he was standing at the easterly side of the doorway that leads to the inner hallway between Court Rooms 33 and 34 and which also leads to Judge Kurata's chambers just adjacent to Court Room 34. He himself was actually standing in that hallway.

I now quote his evidence verbatim.

(Vol. II, p. 78 line 37 - p. 82 line 43)

“Q. Did you have occasion to see either or both of them, Magistrate Kurata and P.W. Watson, on the 15th of November, 1968, at the Old City Hall? A. Yes, I did.

Q. And either or both of them? A. I saw both of them.

Q. I see. And at about what time? A. As I have stated earlier—

Q. Yes? Well, yes? A. I was outside 33 Court for the purpose of giving testimony and I had been there from about 10.00 a.m. On that particular occasion I had a case in No. 23 Court and I had on one or two occasions gone down to see if they were ready to proceed. At about 12.30, I guess it would be in the early afternoon, I was standing still waiting to give testimony in—

MR. MALONEY: What time did the officer say?

THE COMMISSIONER: About 12.30.

THE WITNESS: 12.30-12.40—to give testimony. I was standing in the corridor which led into the main hallway.

MR. FORD: Q. Just a moment, Constable. May I see Exhibit 3-A, Mr. Registrar?

I show you, Constable, Exhibit 3-A in these proceedings, said to be a photograph of part of the hallway of the Old City Hall, with a sign 'Provincial Courtroom 33'—disregard the marks that are on there in ink, can you tell us approximately where you were when as you say you saw both Policewoman Watson and then Magistrate Kurata? A. At this particular occasion, I was standing at this doorway (indicating).

Q. The witness is indicating, with his finger, at the entrance to the doorway, into the corridor that runs, I take it, east from the other entrance, the inside entrance to 33 to 34 Court. A. That is correct.

Q. Yes. Let me see what marks we have on here now. Would you care to mark that with an 'M' with a circle around it, approximately where you were standing when you saw Policewoman Watson and then then Magistrate Kurata, please? A. I was directly inside the door jamb in the hallway, in the corridor.

Q. Directly inside the door jamb just inside the corridor? A. That is correct.

MR. MALONEY: I am sorry, is that the passageway leading to the office, or the corridor of the City Hall?

MR. FORD: By the corridor.

Q. Witness, I am identifying the inside hallway running from the inside door, which cannot be seen in this, of 33 Court, running east of 34 Court. A. That is correct, sir.

MR. FORD: That, my Lord, is what I am referring to as the corridor.

THE COMMISSIONER: Yes.

MR. MALONEY: Thank you.

MR. FORD: Q. And while you were standing, as you have described, just inside the doorway to that corridor, at 12.30, 12.40, what did you observe? A. I observed Policewoman Watson walking in a westwardly direction towards 33, and through the doorway which I have just marked.

Q. Yes? A. And immediately behind her—

Q. Just a moment. You say you observed Policewoman Watson walking westerly, that is from the east in the corridor, or in the outside hall? A. In the corridor.

Q. I see. That is in a direction from the east, from where you were standing? A. Yes.

Q. Towards you? A. Yes.

Q. And what else did you observe if anything? A. She proceeded into the main hallway and she was followed by Judge Kurata.

Q. Yes? A. At this time I was approached by Judge Kurata and he stopped, and he pointed to the policewoman and he made a comment to the effect that, 'She's cute, is she really a policewoman?' I replied that she was a policewoman.

Q. Yes? A. He then hesitated for a few seconds and he said, 'She should be promoted.' I noticed at this time that Judge Kurata appeared somewhat confused, his face was rather flushed and he was appearing to be groping for something to say.

Q. You knew him prior to this incident? A. Yes, I had known him, yes.

Q. And what if anything, apart from what you have said, did you say to him, that is, 'Yes, she was a policewoman'? A. I don't recall saying anything else.

Q. Yes? A. And immediately following this Judge Kurata moved into the main hallway and I was then approached by Policewoman Watson.

Q. Was then Magistrate Kurata there in your presence when Policewoman Watson came and spoke to you? A. No, he was not.

Q. Yes, did you see where he was? A. No.

Q. Yes, and what if anything did she say to you? A. Policewoman Watson inquired as to who Judge Kurata was.

Q. Did she call him by name? A. No, I cannot say exactly verbatim what she said, I believe it was, 'Who is he?'.

Q. How was he dressed by the way? A. He was dressed in his judicial robes at this time.

Q. Yes? A. I replied that he was Magistrate Lucien Kurata.

Q. Yes? A. And then she went on to relate certain things that had happened just prior to this.

Q. What is your best recollection, if any, as to what she said had happened? A. She said, 'He called me into his office', and she said, 'I believe he is under the impression that I was a prostitute', and she said I could—she quoted him as saying, 'I could arrange for a suspended sentence and look after your case', or words to that effect.

Q. Yes? A. At this point I advised her to see one of her superiors, or inspector with regard to this matter.

Q. And was there any conversation, or anything else she said to you at this time that you can recall as to what she said to him? A. No, I don't—yes, she did say that he was very surprised when she identified herself as a policewoman.

Q. Well, did she tell you that, that she had identified herself as a policewoman to him? A. Yes, she said that he was—his composure changed noticeably when she mentioned she was a policewoman, or at least when he realized she was a policewoman.

Q. Yes? A. As I have said, Miss Watson was almost crying, she was visibly shaken and disturbed.

Q. Yes, and is that your best recollection of the conversation with her at that time? A. Yes. I immediately, following this I had to go to 23 Court—

Q. Yes— A. —and I returned a little while later.

Q. Yes, excuse me, Constable. I think you told us that you instructed her to report it to her superior? Is that right? A. Yes.

Q. And then immediately after that you had to go to where? 23 Court? A. Yes.

Q. On a different floor? A. Yes. That's on the main floor, yes.

Q. Yes. Then, following your attendance in 23 Court or at 23 Court, were you at any time that day, with reference to these matters with which we are concerned, again in the area of No. 33 Court? A. Yes. I came directly up to No. 33 Court and at this time I met—

Q. About what time, approximately? A. Oh, it would be five minutes later, five or ten minutes later—

Q. I take it the matter you were checking on at 23 Court was—at least, they weren't ready for you? A. That is correct.

Q. So you came up in about five minutes to where? A. Yes—to where the corridor, just south of the entrance to 33 Court, to the doorway, south of the main entrance to No. 33.

Q. And where, with reference to the main entrance to 33 Court or the hallway? A. This, it was south of the main entrance, the main corridor.

At this point I was confronted by Judge Kurata—

Q. Yes—? A. —and he spoke to me and asked me to come out to lunch with him.

Q. Did you accept or refuse? A. No, no. The case I was ready to testify on was put over to the afternoon and I believe I said, I, I didn't have time, and I thanked him, and I do not know where I went from there. Downstairs, I think.

Q. You thanked him and you declined to go to lunch with him? A. That is correct."

He then testified that in the late fall of 1966 he, together with Constable Hudson, Constable Fitzgerald and Detective Lambert, all of the Metropolitan Toronto Police Force, had been guests of Judge Kurata at lunch at the Sai-Wo Restaurant on the south side of Dundas Street, just east of Elizabeth Street.

In cross-examination the first subject dealt with was with respect to a portion of Policewoman Watson's report on the 15th. November 1968, Exhibit 5. I quote from the transcript, p. 83 line 42 to p. 84 line 22:—

“Q. Officer, Exhibit 5 is a document that I introduced into evidence during the cross-examination of Policewoman Watson. It's the original written report that she prepared on November 15 and addressed to Inspector Fern Alexander.

On page 2 of that report, the second paragraph, she says this: 'I approached the P.C. and asked him if that guy was on the level, and asked who he was. The P.C. told me he was Magistrate Kurata. I told the P.C. that the magistrate had taken me for a prostitute, and I went on to explain what had happened. He commented that he had heard that this was usual behaviour by the magistrate, that it was common knowledge.'

Did you make any statement to that effect to Policewoman Watson? A. I made a comment to that effect. I would not say that they are, that that is exactly what I said.

I did make a statement about, indicating that I had heard rumours about Magistrate Kurata.

Q. And that was based purely on rumour and gossip? A. That is correct."

He was then cross-examined as to any report he had made relating to the incident and he testified that later that same day he typed a report himself and delivered it to Inspector Alexander's office, apparently at her request.

That report, Exhibit 6, was read into the record by commission counsel and I quote the transcript p. 96 line 44 to p. 97 line 47.

"MR. FORD: The report is on a form of the Metropolitan Toronto Police, Intra-Departmental Correspondence, to Inspector Alexander, Woman's Bureau, Police Headquarters, from P.C. Moclair, #52 Plainclothes Unit, November 15th, 1968. Re: Complaint from Policewoman.

'Madam:

On Friday, November 15th. 1968, at approximately 12.45 p.m. I was standing outside Courtroom #33, Old City Hall, waiting to give evidence on a one . . .'

—and I will exclude the name of the person:

' . . . charged with Vagrancy C, when I was approached by Magistrate Lucien Kurata in the corridor adjacent to Courtroom #33. Policewoman Watson had been speaking to the Magistrate and as she continued into the hallway Magistrate Kurata said to me "She's cute"—"Is she really a police-woman"? I replied that she was a policewoman, and the Magistrate then said "I think she should be promoted".

I had been speaking to Policewoman Watson prior to this incident and when the Magistrate moved away she came to me and inquired as to who this Magistrate was. I told her his name and at this point she said, he called her to the end of the corridor and asked her to remove her coat. She then went on to relate that the Magistrate asked her what she was charged with and made some comment to the effect that he would get her a remand or a "light sentence". Policewoman

Watson then related to me that she informed him that she was a policewoman and upon hearing that he seemed surprised and somewhat confused.

Miss Watson appeared a bit disturbed about this incident and I asked her if she intended to take the matter further when I had to leave to attend another court case. I spoke to Miss Watson later but I don't recall anything being said concerning the incident with Magistrate Kurata.

Respectfully submitted

Thomas Moclair, P.C. #393'."

He was then questioned as to what he remembers were Policewoman Watson's complaints. I quote:—

(Vol. II p. 88 line 3 - p. 89 line 8)

"Q. I see. Did she tell you anything about whether or not Judge Kurata had put his hand on her bosom or her breast? A. She did not.

Q. Pardon? A. She did not.

Q. She didn't? Did she tell you anything about him going into the washroom and coming out and she was afraid to look anywhere except his face? A. I have no recollection of her saying that.

Q. You would have remembered it, would you not? A. I would imagine so.

Q. Yes. Did she tell you anything about him attempting to undo buttons on her coat? A. She may have, I can't say for certain. She may have mentioned about . . . um . . . Magistrate Kurata asking her to undo her coat.

Q. Why do you think she may have? Do you recall it or do you not recall it? A. Well, I . . . um . . . I vaguely recall her saying something of this nature but I can't be absolutely sure.

Q. Well, let us probe your memory as best you can, a little better. You have acknowledged she did not tell you anything about him putting his hand on her breast and that she did not tell you anything about being terrified or too frightened to look anywhere except his face—

MR. FORD: The witness said he did not remember that—

MR. MALONEY: Q. Did you say you didn't remember that? A. I'm sorry, I cannot—you will have to—

Q. I asked you did she say anything to you about the fact she was too frightened to look anywhere except his face when he came out of the bathroom? A. No, I have no recollection of her saying that.

Q. Don't you imagine if she had told you that you would remember it? A. I would imagine I would, yes.

Q. But then I asked you, do you recall her making any complaint that he tried to undo her coat buttons? A. Yes, I, I believe she did make this comment. Like I said, I can't, I am not positive.

Q. As best you can recall, what was it she said—? A. Something—

Q. —about his attempt to undo her coat buttons? A. Well, I'm a bit hazy as to this particular incident, so I can't be any more specific.

I believe she made a comment to the effect that he asked her to undo her coat. Now, I can't be more specific.

Q. Well, I just wondered why would that specific little bit of detail remain in the back of your mind? A. I don't know.

He was then confronted with testimony he had given before the Judicial Council as follows:

(Vol. II p. 89 line 9 to p. 90 line 33 and line 37)

“Q. Do you remember giving evidence at the Judicial Council that was held in camera before Christmas, and you gave your evidence on December 23? A. Yes.

MR. MALONEY: Page 44, about line 25.

Q. See if you recall being asked these questions and giving these answers:

‘Q. Policewoman Watson gave a report of the occurrence to Inspector Fern Alexander on November the 15th, a written report, and said in that report that Mr. Kurata's hand was over her right shoulder resting on her right bosom, and his left hand was around her waist attempting to undo her coat buttons. What did she say to you about that part of the occurrence?

A. She mentioned about Judge Kurata asking her to take her coat off. She did not mention anything about him placing his hands on her bosom.

Q. She made no complaint to you about the allegation that he rested his hand on her right bosom?

A. None whatever.

Q. Or that he tried to undo her coat buttons?

A. No.’

A. That is correct.

Q. In other words, we may take it then she did not mention to you that he made any attempt to undo her coat buttons? A. That is correct.

Q. That is not your recollection of a few minutes ago.

THE WITNESS: No.”

The cross-examination then turned to the luncheon in 1966 and Constable Moclair said he found the date and particulars from his memo book;— It was October 26th. 1966.

Going back to the 15th. November 1968, he was asked these further questions and gave the answers recorded:—

(*Vol. II, p. 93 lines 18-26 and line 38 to p. 94 line 8*)

“Q. When you spoke to Judge Kurata after—On November the 15th, when he came down the corridor, did he say something to the effect, ‘That’s a pretty sharp policewoman?’ A. Yes, he did.

Q. And when she, when Mrs. Watson told you her version of what happened, omitting the things I asked you about, did you say to her, ‘Well, it is just your word against his?’ A. Yes, I made that comment, yes.

Q. Was Policewoman Barron there at any time while you were there? A. Yes.

Q. Did you and he—did you and she have a talk? A. I don’t recall. I might have said, ‘Hello’ to her, or some words to that effect, but I don’t recall indulging in any conversation with her.

Q. Where was she? A. I recall that she was seated on a bench with Miss Watson, just outside Courtroom 33.

Q. Having a talk? A. I guess so.

Q. Nothing unusual about it that you could see? A. No.

Q. Pardon? A. No.

Q. And were you talking to Judge Kurata then? A. This was about the time that Judge Kurata approached me and invited me for lunch.”

Evidence of Policewoman Joan Elizabeth Barron

Transcript Vol. II pp. 98-108

Policewoman Barron has served eight years as a policewoman and qualifies as one of the more senior of such officers. As of the 15th. November 1968 she was serving with the Intelligence Bureau.

She was well acquainted with P.W. Watson.

Her evidence with respect to the 15th. November 1968 in so far as it relates to these matters is as follows:—

(*Vol. II, p. 99 line 20 - p. 100 line 12*)

“Q. Yes. Would you tell us what happened? A. Yes, sir. at approximately 12.50 p.m., Policewoman Marlene Watson called to me on the telephone. She said that she would like to speak to

me, that it was most important. She seemed very agitated over the telephone, so I made arrangements to meet with her as soon as I could.

Q. Where? **A.** I found out from her that she was in the hallway of the City Hall, at 33 Court. I left the office immediately, and at about 1.10 p.m. I met her outside of 33 Court.

Q. Yes, and how did Policewoman Watson appear in her appearance when you met her? **A.** She was extremely upset, her appearance showed this, she was quite pale, she seemed to be very upset, nervous.

Q. And what if anything did she say to you when you met her? **A.** She said that she had something very important to talk to me about, she asked me when I first came to see if I recognized a person who was in the hallway. She pointed out a person who was wearing judicial robes. I looked at this person and I saw him, but I did not know who he was. She said that she could not speak to me just then.

Q. Excuse me, did you recognize the nature of the judicial robes of the court? **A.** I did not recognize them, no sir, all I could say was he was a person on courts, that he must have been a judicial person.

Q. Did you say anything to P.W. Watson? **A.** I pointed out that I did not know who the person was myself.

Q. And what took place after that? **A.** She said she could not talk to me then, it seemed that this person was nearby whenever we went to speak. We were sitting on the bench and there were other people in the hallway as well. When I first approached her she was talking with P.C. Moclair. He left, or she seemed to leave him, and she came over and spoke to me."

She and Policewoman Watson then went to lunch together.

Policewoman Watson's complaint to Policewoman Barron at lunch was as follows:—

*(Vol. II p. 100 lines 23-42,
p. 101 line 22 - p. 102 line 9)*

"**Q.** And at lunch, what conversation, if any, was there relative to the matter we are now investigating, for the reason she called you? **A.** Policewoman Watson during the lunch hour, told me that certain things had occurred between herself and the person that she had pointed out. She told me that this person had taken her for a prostitute, and he thought he could arrange a suspended sentence for her. She said she had been standing in the hallway when this person approached her and took her by the hand and led her down a hallway and into an office, she believed this to be his office. She said that he allowed her to enter the room and as she turned she saw him locking the door and turning

a bolt on it. She described it as a type of Yale lock. She said that she was standing there, and he came from behind her and put his arm over her shoulder and another one around her waist. She described it to me as having her coat unbuttoned with the left hand, and with the right hand touching her on her bosom, on her right bosom. She—

MR. FORD: Just continue, please, Policewoman? A. She said that he had had a conversation with her. He said at this point that she had enough time, that her case was not going to be called for a while.

Q. Yes? A. She said that he then left her and stepped into a washroom, that was off to the part where she was standing, somewhere within the office, but off to one side. When he returned from the washroom he said to her, 'You are not undressing'. She was immediately surprised and shocked at this. She said that she had identified herself earlier, when he asked her what her name was, coming down the hallway, she said her name was P.W. Watson. She thought that he knew what the P.W. stood for. When he came out with the words 'You are not undressing', she stepped back from him and said, 'You have got me confused, I am Policewoman Watson' or words to this effect.

She said his expression changed considerably, and he at that stage mentioned if she had a court case, or sentence she wished to discuss, she should come to him with them. He unlocked the door and she left, then returned to the place where she had been standing, when he first approached her. He went to speak with P.C. Moclair and she waited till their conversation was finished, and she spoke to Moclair. She apparently told Moclair—

Q. You are now speaking of what Policewoman Watson told you at lunch? A. Yes. She told Moclair that the magistrate had taken her as a prostitute, and was going to arrange a suspended sentence for her if she had been a prostitute. Moclair advised her to get in touch with our Inspector Alexander. She had tried to get in touch with Inspector Alexander but was unable to do so, so she called me."

Policewoman Barron then advised her to get in touch with Inspector Alexander.

The cross-examination of Policewoman Barron was confined to details of her complaint and while there were discrepancies, they were with respect to essentially irrelevant matters. For example:—

(p. 105 lines 1-33)

“Q. What was it Mrs. Watson said to you about the Judge's hand being in contact with her right bosom? What is your recollection of that? A. What do you mean, sir?

Q. I am asking you what your recollection is of what Mrs. Watson said to you with respect to whether or not Judge Kurata had his hand in contact with her right breast or bosom? **A.** She said that he had put his right hand over her shoulder and it had been on her, on her bosom.

Q. It had been on her bosom. And according to your recollection—is that your best recollection of what she said exactly? **A.** If I recall correctly, sir, she said it had been resting on her bosom.

Q. I see. She told you this—when? At lunch? **A.** She said this at lunch, yes, sir.

Q. And, indeed, that's what you typed into this statement, Exhibit 5, isn't it?

Can I just see it, please?

Exhibit 5, the last paragraph there, the second sentence:

'His hand was over my right shoulder, and it was resting on my right bosom.'

A. Yes, sir.

Q. No doubt about that? **A.** No, sir.

Q. Would that shock you, when you heard that? **A.** Yes, sir.

Q. It is not the sort of thing you would forget, is it? **A.** Not from a person, a judicial—

Q. In a judicial position? **A.** That's right, sir."

Policewoman Barron's significant testimony with respect to Policewoman Watson's complaint is crystallized in the next sequence:—

(p. 105 lines 36-39)

"**Q.** And it shocked you when you heard her say that to you, that such a thing could happen? **A.** I would say that it shocked me, sir, and it also shocked me, the fact that he felt she had been a prostitute."

The Evidence of Provincial Judge Lucien Coe Kurata with respect to the Alleged Incident of the 15th November 1968 Involving Policewoman Marlene Watson

See transcript Vol. VI pp. 413-441 (in-chief)

Vol. VII pp. 461-511 (cross-examination)

Judge Kurata first learned that Policewoman Watson had made a formal and very serious complaint against him when he

received a letter dated November 25, 1968 (that was a Monday) from then Chief Magistrate and now Chief Provincial Judge (Criminal Division) Arthur O. Klein, Q.C. who is also, it must be noted one of those specifically designated as a member of the Judicial Council under the Provincial Courts Act. That letter addressed to Magistrate L. C. Kurata was entered as Exhibit 11, and reads as follows:—

“Dear Sir:

I enclose herewith a copy of a letter dated November 22, 1968, from Chief of Police James Mackey to me, and a copy of the enclosure therewith.

Please let me know, preferably in writing, what course you wish to take.

If you wish to discuss the matter with me, my secretary, Miss Fisk, will be able to arrange an appointment for you if you will telephone her.

Yours very truly, Arthur O. Klein, Chief Magistrate.”

The first enclosure referred to is a photo copy of a letter dated November 22nd. 1968 from Chief of Police J. Mackey to Chief Magistrate, Province of Ontario, Arthur O. Klein, Q.C. It was entered as Exhibit 12 and reads as follows:—

“Dear Sir:

Attached herewith is copy of a report submitted by Policewoman Marlene Watson (5564) which I think you will find self-explanatory.

This incident itself was distressing enough to the policewoman concerned, but I think the implied interference with the course of justice on the part of the Magistrate is a serious matter.

Recently Attorney General Wishart called me to his office on matters relating to Magistrate Kurata, and I would suggest that he be informed of this situation.

Yours very truly, J. Mackey, Chief of Police.”

The second enclosure was a copy of what was entered as Exhibit 5, namely, Policewoman Watson's report to Inspector Alexander of November 15th. 1968. Extracts from that report have been quoted previously but it is desirable that it now be quoted in full, as Judge Kurata received it and learned for the first time that he was accused and what the accusation was.

Exhibit 5 reads as follows:—

"METROPOLITAN TORONTO POLICE
Intra-Departmental Correspondence

| | | |
|-----------------------|----------------------------------|---------|
| TO: Fern Alexander, | FROM Criminal Investigations and | SECTION |
| Inspector, | Staff Functions. | UNIT |
| Youth Bureau | DATE November 15, 1968 | |
| RE: MAGISTRATE KURATA | FILE | |

Inspector:

At 10 a.m. November 15, 1968, I was scheduled to appear in #33 Court, Old City Hall, to give evidence in the case of Elio Zoratto, charged with indecent assault.

The court case was delayed for some time, and during this interval I stayed in the hallway of the courthouse. At this time there were a number of persons in the hallway, amongst them were many known prostitutes, also appearing in the same court room.

At approximately 12.35 p.m. I was standing near the doorway to the courtroom, smoking a cigarette. Two females, whom I know as prostitutes, were sitting on the bench nearby. I observed a man I now know as Magistrate Kurate, came from the hallway. I had never seen this man before, I knew he was a Magistrate from his Judicial robes, but did not know his name. The Magistrate came directly to me, and took my left hand and said, 'Come down here, I want to talk to you'. I assumed he had recognized me as a Policewoman, and wanted to talk to me about a case.

As we were walking down the hall, he was still holding onto my hand, he asked what my name was, to which I replied P.W. Watson. We approached a door, and he said, 'let's go in here, come on'. He was still holding onto me, so I followed. He opened the door to an office, and stepped back, to let me enter first. I believe it was his office.

He let go of my hand when he entered and was behind me, gently pushing me into the room. His hand was over my right shoulder, and it was resting on my right bosom. His left was around my waist and he was attempting to undo my coat buttons. He said something about my court case not being called for a while, so that we had time. He also said something about talking to the girl down the hall, and he had arranged for her to get a suspended sentence. (I got the inference that if I had been a prostitute he would have arranged for a suspended sentence for me too).

He had turned around, shut the door and locked it. I walked away from him and saw him bolting the door. He then walked into the washroom, that was just off from the office, and when he

returned a short time later, he said, 'Oh, you're not undressing?' I was too shocked at first to reply to anything, and then when he mentioned undressing, I said, Just a minute, I think you've got me confused, I said, 'I'm a Policewoman'. His expression changed considerably, and he said, 'Well if you ever have any cases you want to talk over, or a case that you want to suggest a sentence, come and see me. He mentioned that Magistrate Bolsby was a good Magistrate, and I made some comment. He went to the door, he unbolted it, and we went out into the hallway. I went back to the same place I had been standing. The Magistrate approached a person I believe was a court reporter, and P.C. Montclair, #395-52 Division Plainclothes. The Magistrate was speaking to both of these persons when he said 'boy, she's a sharp P.W.'. He lit a cigarette, and his hands were shaking quite noticeably. He then walked back down the hall toward the same office.

I approached the P.C. and asked him if that guy was on the level, and asked who he was. The P.C. told me he was Magistrate Kurate. I told the P.C. that the Magistrate had taken me for a prostitute, and I went on to explain what had happened. He commented that he had heard that this was usual behaviour by the Magistrate, that it was common knowledge.

While I was standing in the hallway, the P.C. had moved to another part of the hallway, the Magistrate spoke to me, he asked me how long I had been a P.W. and how I liked the job, it must be a rough job, and did I work out of Morality. He appeared agitated, and everytime I looked around he seemed to be there.

At 12.50 p.m. I called P.W. Barron, 5531, and asked her to meet me for lunch. We met at 1.10 p.m. and I related the above facts to her.

At 4.30 p.m. I reported the incident to Inspector Alexander, and typed up this report immediately after our conversation.

Respectfully submitted,
(signed) Marlene Watson

Marlene Watson, P.W. 5564
Youth Bureau."

Judge Kurata's evidence is that at no time did he attend on and consult with Chief Judge Klein as he was invited to do in the letter of the 25th. November 1968. Instead he consulted his counsel, Arthur Maloney, Q.C., who prepared a written reply for Judge Kurata's signature. This reply, Exhibit 13, dated November 28th. 1968, which would be the Thursday of the same week in which Exhibit 11 was written and delivered with its enclosures, reads as follows:—

(Vol. VI, p. 417 line 26—p. 418 line 27)

“Dear Chief Magistrate Klein:

I have received your letter of November 25th last in which you enclose a copy of a letter dated November 22nd which you received from Chief of Police James Mackey, attached to which was a copy of a report addressed to Inspector Fern Alexander of the Youth Bureau of the Metropolitan Police signed by Police-woman Marlene Watson.

Policewoman Watson has attributed conduct to me which if true would constitute a criminal offense. I am surprised that acting on her uncorroborated word the Chief of Police of this municipality would send a written report to you without having furnished me with any opportunity to answer this lady's allegations.

The accusations of Policewoman Watson are false. If she does not withdraw them I am entitled as any ordinary citizen would be to an opportunity to defend myself against this accusation before a jury. If she persists in her accusations against me then the course open to her is clear. She may swear out an information against me. I will appear in answer to it. I am satisfied in so doing I will establish my innocence.

Chief of Police Mackey in his letter to you of November 22nd dismisses the incident described by Policewoman Watson as 'distressing'. As far as I am concerned this is no way to leave the matter and unless the Policewoman is prepared, as I say, to withdraw her charges, I am entitled to the fundamental right of being given an opportunity to defend myself in court.

Because of the nature of the accusations that have been passed on to you by Chief Mackey I have retained a counsel who has agreed to represent me—Mr. Arthur Maloney, Q.C.

Yours very truly, Lucien Kurata, Q.C.,
Magistrate.”

Judge Kurata's counsel prepared a further letter for his client's signature, dated 3rd. December 1968, entered as Exhibit 14 and it reads as follows:—

(Vol. VI p. 421 line 10 to p. 422 line 35)

“The Honourable Arthur Wishart, Q.C., M.P.P.,
Minister of Justice and Attorney General of Ontario,
Parliament Buildings,
Toronto 2, Ontario.

Dear Mr. Wishart:

I am informed by my counsel that you are giving consideration to referring the question of my fitness as a Magistrate to the

newly created Judicial Council under the Provincial Courts and Judges Act.

As I read Section 8 of the Act this Council has power only to recommend for or against a public inquiry before a Judge of the Supreme Court under Section 4 of the Act.

I want you to know that I regard this procedure as unfair in that it prevents me from establishing my innocence of the allegations of Policewoman Watson before a tribunal entitled in law to exonerate me. Neither the Judicial Council nor a Supreme Court Judge on an inquiry have any jurisdiction whatsoever to pass judgment on my guilt or innocence. Only a properly constituted court has power to do that. I urge you, therefore, to support the position stated by me in my letter of November 28th to Chief Magistrate Klein in which I said:—

‘The accusations of Policewoman Watson are false. If she does not withdraw them I am entitled as any ordinary citizen would be to an opportunity to defend myself against this accusation before a jury. If she persists in her accusations against me then the course open to her is clear. She may swear out an information against me. I will appear in answer to it. I am satisfied in so doing I will establish my innocence.’

If the Policewoman does not see fit either to withdraw her allegations or to take such steps as are necessary to initiate proceedings against me in accordance with the usual practice, I need not remind you of your powers under Section 487 s.s. 1 (a) of the Criminal Code which provides as follows:—

‘487. (1) A bill of indictment may be preferred

(a) by the Attorney General or anyone by his direction, before the grand jury of any court constituted with a grand jury.’

It follows that it is my opinion that if I am to be the victim of these allegations I should be given the opportunity to establish my innocence in a proper way.

Yours very truly,
L. C. Kurata

Lucien Kurata, Q.C.
Provincial Judge”

Judge Kurata’s demand that Policewoman Watson’s accusations be put in the form of a charge to be tried in the ordinary criminal courts was not acceded to and instead, as is well-known now, was referred to a private inquiry by the Judicial Council who sat on the 23rd and 26th December 1968, reporting to the Attorney General for Ontario in due course. The report of the

Judicial Council is reflected in the Letters Patent convening this inquiry and entered as Exhibit 1.

Judge Kurata's version of what transpired over the noon hour of the 15th. November 1968 is as follows:—

(*Vol. VI p. 423 lines 1-3 and lines 31-33*)

"MR. MALONEY: Q. Now, to go back to November the 15th. You were on that date presiding over which Court in the Old City Hall. A. In 24 Court."

"Q. Do you remember approximately when it would be finished? A. Well, it would be approximately 12.30."

Then he describes his route to the second floor, west section, Old City Hall.

Continuing his evidence I quote the following:—

(*Vol. VI, p. 425 lines 5-16;
p. 425 lines 23-24;
p. 425 line 29-p. 426 line 7;
p. 427 lines 13-38;
p. 429 lines 15-29;
p. 431 lines 21-28;
p. 433 line 43-p. 434 line 32;
p. 435 line 42-p. 436 line 45.*)

"Q. You got off the elevator. And tell us what happened, and tell us what happened with regard to this lady, Mrs. Watson, the police lady? A. Well, as I had taken about two or three steps into the corridor at the north of the Old City Hall on the second floor which leads to my office I heard a female voice say, 'May I speak to you, your worship.' This was behind me and I turned and there was a female in a green coat and a green skirt, who could be the only female who would have said those words to me.

Q. What happened after she said, 'May I speak to you, your worship'? A. I asked her who she was and she said she was P.W. Watson.

MR. MALONEY: Q. Did you know what the meaning of P.W. meant? A. It meant policewoman.

Q. Do you have any recollection of whether or not you had met or seen her before? A. Never seen her before.

Q. What happened then? A. Well, I indicated to her my office was at the end of the hall near the entrance to 34 court and indicated if she wished to speak to me that was the proper place to talk to me rather than in the hall, and she proceeded

down the hallway. And when we got to the door, it is a sort of restricted area, and I asked her to step aside while I opened the door. I opened the door for Policewoman Watson and she went in. At this time I had my Court diary, the Liquor Control Act and the Liquor Licence Act and—If there is a picture showing my office I can indicate where I put the three books I have described. At that time I was walking forward with my Court diary and the other books and she asked me what kind of a magistrate Magistrate Bolsby was, and I was taken aback with this question and was really annoyed.

Q. Why did it annoy you, Judge Kurata? **A.** Well, I had never been approached by a policewoman or any constable and asked what kind of magistrate another magistrate was.

Q. Where were you when she asked this question? **A.** I would have been in front of her putting my books on my desk.

• • •
Q. You have told us your reaction to that. Did she give any indication of why she wanted to know about Magistrate Bolsby.

A. She did not.

Q. Did you have any knowledge or do you recall now whether there was any discussion as to whether or not she was going to be giving evidence in a case? **A.** After that remark she indicated to me she had a case before Provincial Judge Bolsby and indicated to me that it was an indecent assault case and she had been a decoy.

Q. What happened after—Did you tell us whether or not you said anything to her when she asked you what sort of a person Judge Bolsby was? **A.** I believe I replied to her that he was a fine magistrate, as he was then.

Q. What happened after that? **A.** That was the end of any discussion with the policewoman as far as I was concerned. I was anxious to go down to the library.

Q. What did you do? **A.** My recollection is I indicated to her I wanted to go out and the door was there, and she proceeded out of my office and westerly along the inner corridor along the north side of the Old City Hall.

Q. Did you see anybody there? **A.** I saw P.C. Moclair and a court reporter who had come out of 33 Court.

• • •
Q. Did you have any doubt she was a policewoman before she came into your office? **A.** I asked her name before I escorted her to my office. I knew she was a policewoman when I took her into the office.

MR. FORD: I think my friend would find his evidence more valuable if he did not lead.

MR. MALONEY: I think I should ask him to comment on the statements of the policewoman.

MR. FORD: I was just talking of the form of the questions.

MR. MALONEY: All right.

MR. MALONEY: Q. All right, you have dealt with what went on in your office. Then, I think you told us you wanted to go to the library and you came out of your office. Would you tell us what happened then? A. As we came out of the office Police-woman Watson would be approximately six feet in front of me and as we approached—we were going in a westerly direction down the north corridor—I wonder if there is a picture?

MR. MALONEY: All right. You wanted the assistance of a diagram or picture to describe what happened when you came out.

THE WITNESS: I think, well, I am going to indicate from my recollection where P.C. Moclair was by an 'X'.

THE COMMISSIONER: In the corridor just beyond the doorway which has been turned back against the— A. That is correct—

THE COMMISSIONER: —wall dividing the corridor from the main hallway.

THE WITNESS: It would be really close to the stairwell down to the main floor—

THE COMMISSIONER: Or stairwell leading up to what used to be the County Library.

THE WITNESS: Yes. And this position would be the court reporter. My recollection is that they were speaking to each other.

THE COMMISSIONER: You have marked the position with an 'X' and a 'O' on the floor, just slightly to the east of the turned-back entrance— A. Yes.

MR. MALONEY: East or to the west? A. To the east.

Q. To the east, yes. Now, before you proceed on that—I'm sorry, there was an 'X' and there was an 'O'? A. 'X' was the position of P.C. Moclair.

THE COMMISSIONER: And the 'O' is the court reporter. A. Zero or 'O' is the court reporter.

Q. Now, we are going back to where you told us Mr. Moclair was standing and where this court reporter was standing. You have marked that on the exhibit.

Go on and continue with that part of the happenings on November the 15th. You have come out of your office. Where

was Policewoman Watson—you have her behind you— A. She was in front of me, approximately six feet in front of me.

Q. And what happened in that corridor, if anything? A. Well, as we went, as we went down the hallway, P.C. Moclair made some remark to me about her abilities as a policewoman—

Q. Yes— A. —to which I replied, 'She is a sharp police-woman', meaning this in a derogatory sense.

Q. What did you mean with 'derogatory sense'? You referred to her as a 'sharp P.W.', what did you mean to imply by that? A. Well, I felt it was highly improper that she should come into my chambers and ask me what kind of magistrate Magistrate Bolsby was and then to go on with some remarks about a case that she had before him, I thought it was highly improper.

Q. All right. Did you say anything to Mr. Moclair about how you thought she ought to be promoted? A. I did not.

Q. Was there any such discussion at all? A. There was no such discussion at all.

After the remark I made that she was a sharp policewoman, she proceeded down the hall and where she went I do not know. I proceeded on down to the same bank of elevators on the west side and went down to the library on the main floor.

Q. Yes. Did anything else happen, as far as you can recall, after you went down to the library? A. I stayed in the library during the entire lunch hour, and shortly before two I returned to the same bank of elevators and went back up to the second floor.

Q. Yes? A. And at this time, when I emerged from the elevator and proceeded north down the hallway, I saw P.W. Watson sitting on one of the benches outside 33 Court, with P.C. Creighton.

Q. Yes? A. And as I passed them, my recollection is that both of them said, 'Good afternoon, Your Worship'.

Q. Where did you go? Into your office? A. I went into my office, washed my hands, and picked up my books and returned to 24 Court."

Under cross-examination Judge Kurata said:

(*Vol. VII, p. 468 line 8—p. 475 line 13*)

"Q. My friend reminds me when I say 'for some time', he refers to the report. We will come to it later. But, in fact, you were familiar with the nature of her allegation from—within two weeks after the alleged episode in November, 1968? A. Since November the 25th when I received a letter from Chief Judge Klein.

Q. Your sworn evidence, which you are asking his lordship to accept, witness, is virtually a complete denial of the evidence of P.W. Watson, except that you saw her on the 15th November and she was shortly, as you have told us in your evidence, in your office? A. I am sorry, I didn't hear the last part of your question.

Q. Your sworn evidence was virtually a complete denial of her evidence, P.W. Watson's, except that—to the extent you say you saw her on the 15th of November and she was shortly in your office, as you have told us? A. That is correct.

Q. So, clearly and unequivocally, your evidence conflicts with hers as far as we are concerned in every material particular. Correct? A. That is correct, other than the fact that she was in the office.

Q. And that you saw her, as you have told us? A. That is correct.

Q. Policewoman Watson says, and you realize I am digesting, she was standing by the corridor door, she felt someone take her hand, it was you, you asked her to go down to the office, which she did. I am just breaking these incidents up. On the contrary, you swear, she spoke to you and said, 'May I speak to you, your worship', and you indicated where your office was and she preceded you down the hall. Is that right? A. That's not right because she spoke to me and I asked her who she was.

Q. I thought I indicated I was digesting each of these episodes. A. Well, that's a material portion of the evidence.

Q. Then, I am speaking of the initial contact between you and Policewoman Watson and her evidence as to your taking her hand and asking her to go down, and your evidence that she, out of the blue, although unknown to you or you to her, asked you to speak to her. That is a direct, absolute black and white, complete contradiction of facts? A. That is correct.

Q. And, if my recollection is correct, you described her evidence in that regard yesterday as a pure fabrication. Is that your language or counsel's language to which you agree? A. That is correct.

Q. You say she is lying on oath. A. That is what I said.

Q. And that is what you say now? A. That is correct.

Q. She is a liar on oath, giving false sworn—intentionally giving false sworn evidence on oath? A. That is correct.

Q. For what possible reason would a policewoman, a stranger to you, ask to speak to you out of the blue and walk down to your chambers, do you know? A. For the reason that she asked me, when she was in the office, what kind of a magistrate Magistrate Bolsby was. That is the only reason I know she would ask to see me.

Q. Does that strike you as very unusual? A. Very irregular and I was highly annoyed.

Q. You were very annoyed, you say, and angry about it? A. That is correct.

Q. Did this ever happen to you before? A. It never happened before, Mr. Ford.

Q. What reason would Policewoman Watson, whose character is unsullied and not challenged in this Court, possibly have for giving false evidence and lying on oath, as you have said, about this incident? A. For the reason that when we left the office she knew I was annoyed and may have called her superior.

Q. That is your explanation? A. That would be the only possible reason that I would have.

Q. But because you were so angry with her? Did you indicate your anger to her? A. She knew I was annoyed because I more or less ushered her out of the office and advised her I wanted to go down to the library.

Q. The only explanation for her lying falsely on oath and perjuring herself, according to your evidence here, it may have been because she knew you were angry and annoyed with her for asking about what sort of a magistrate another magistrate was, so she then reported falsely to her own—concocted and fabricated this part of the story and continued it by false evidence? That is your explanation? That is the only motive you can think of? A. That is the only motive I can think of, except I have indicated before there was a minority of members of the morality bureau who were dissatisfied with my judgments.

Q. You have not indicated this before. A. To the best of my knowledge it was indicated before.

Q. Yesterday? A. Not yesterday.

THE COMMISSIONER: Q. Not yesterday? A. Not in this court.

MR. MALONEY: He is referring to the Judicial Council.

MR. FORD: Q. You are referring to evidence—I did not lead evidence about the Judicial Council but my friend Mr. Maloney says you refer to evidence given before the Judicial Council? A. That is right, Mr. Ford.

Q. You say she may have had another motive, apart from being annoyed with you and fabricating the story to her superiors? She may have had another motive? A. That is correct.

Q. What is this other motive? A. I just told you.

THE COMMISSIONER: Q. Expand on it; I do not understand it. I have heard nothing about it before. A. Well, there's a minority of the members of the morality that haven't been satisfied with some of the judgments that I have made.

Q. So, what has that got to do with it? A. Well, this is some way she would be getting back at me.

MR. FORD: Q. You knew she was not in morality at any time? A. I didn't know she was not in morality.

Q. Some way that she, a policewoman in the youth bureau on the evidence, not in the morality bureau, may have been getting back at you because you say a minority of persons—minority of the morality bureau may have been annoyed by judgments of yours? A. That is correct.

Q. You are suggesting, then, she is part of a police conspiracy to destroy you? Is that what you are suggesting? A. It would be the only other motive I can think of.

Q. As a judge, witness, are you seriously suggesting that a motive for Policewoman Watson, whose character has not been properly attacked in this Court, may be part of a police conspiracy to destroy you because some member or members of the morality bureau were not happy about your judgments? A. You asked me for the reason and I gave it to you, a motive.

Q. Yes? A. That would be the answer.

Q. I see. You, as a judge, seriously believe that may be a reason for this false evidence? A. You asked me for possible reasons, Mr. Ford, and I am giving you the only evidence I would know of.

Q. And I am giving you an opportunity, witness, as a judge, to carefully and calmly answer my question, that you say, as a judge, you believe that may have been the reason that she may have been a part of a conspiracy? A. I will put it to you this way—

Q. Is that right? A. I will put—

Q. Is that right? A. You will have to ask the question again.

THE COMMISSIONER: That is what I understood you to say, Judge Kurata. It is a most serious thing you are imputing as a possible motive, that Policewoman Watson's evidence, that she was part of a police conspiracy involving a minority of the Morality Squad, to destroy you, publicly, because they were dissatisfied with some of your judgments. Is that what you are telling me? A. That is what I am telling you, my Lord.

THE COMMISSIONER: All right. A. As one of the only possible reasons that I could think of—

THE COMMISSIONER: I understand. I put it to you that you are putting that as a possible motive."

The cross-examination then proceeded to deal with each and every point of conflict between the evidence of P.W. Watson and

Judge Kurata. He categorically denied each and every allegation that could in any way be interpreted as incriminating him.

The following sequence then appears in the transcript.

(Vol. VII, p. 480 line 44 to p. 480A line 35)

“Q. If her evidence is true that she has given on oath as to what took place in chambers, and your evidence is not true, the clear inference, on her evidence, is that you assumed her to be a prostitute, awaiting trial in 33 Court, outside Women’s Court? Do you agree? A. Well, it must be taken in conjunction with the first section you have referred to—

Q. Yes, all right, take them both together, yes— A. If the two would be together, it would be quite correct.

Q. Yes, thank you. A. It is a case of one or the other.

Q. That is right. And if her evidence as to what happened outside and being invited into your chambers, and what took place in there—you agree with me that the clear inference would be, if that evidence of hers is true, is that you assumed her to be a prostitute awaiting trial, right? You have just agreed and I am just repeating it. Right? A. Well, the answer I gave before would be appropriate to this, Mr. Ford. I would have to agree with you; it is a matter of credibility.

Q. Yes, that’s right.

What had Policewoman Watson to gain by immediately complaining to P.C. Moclair, P.C. Barron, and, by a report to Inspector Alexander, if the facts she was describing were pure fiction? What would she have to gain? A. All right. In the first proposition that I stated to you as a possible reason, would be that she had laid a complaint about my conduct before I had, she would have thought, made a complaint to her superior officer about her coming into my office and asking the improper question as to what type of magistrate Magistrate Bolsby was, and, on the second proposition she would have completed the first step towards my destruction as a judge.

Q. As part of a conspiracy? A. Right.”

Then the following passage occurred:—

(Vol. VII 480-A line 38 – p. 481 line 29)

“THE COMMISSIONER: Judge Kurata, if I—

THE WITNESS: Yes, my Lord?

THE COMMISSIONER: —if I accept the second possible motive you put forward as being one that I have to consider, can you assist me as to the, at what stage the detail of how to handle this accusation against you would have formed itself in Police-woman Watson’s mind?

Would it be on the way down to your chambers, those twenty steps, inside, or on leaving, and before, between the time she left your chambers and spoke to Constable Moclair? When would this have formed in her mind, this conspiracy method of dealing with it?

THE WITNESS: I think it would have been a matter of any conspiracy being completed long before she ever got to the area of 33 Court.

THE COMMISSIONER: Q. So that it was purely fortuitous, with this in her mind, that you just happened to come along at that time? She was really lying in wait for you? A. I wasn't suggesting she was—she was properly in 33 Court.

Q. Well, I'm not sure you understand me. You told me that you would have to believe that, if the motive was conspiracy to destroy you, that it would have had to be something formed in her mind long before, and I would be inclined to agree with that— A. In the minds of other persons—

Q. And in her mind too, and in her mind too? A. That is correct, my Lord.

Q. If she was going to be part of it.

She is outside No. 33 courtroom; then she must be waiting for an opportunity to get into your chambers and put you in an embarrassing position? A. That would be correct, sir, that is correct, my Lord."

Continuing with the challenge to Judge Kurata with respect to the testimony of P.W. Watson, I quote the following passage:—

(*Vol. VII, p. 483 line 42 – p. 484 line 7 and p. 484 lines 21-22*)

“Q. Well, we'll come to that.

Then, following along this general episode with Police-woman Watson, I wish to deal, direct your mind to the conversation or the evidence of the conversation before, before lunch.

Now, P.W. Watson says, while standing in the hallway you spoke to her and asked her how long she had been a policewoman, did she like the job—or words to that effect. On the contrary, you deny that entirely? Correct? A. That is correct.

MR. FORD: Q. Again, you say she is lying? A. That is correct.”

The cross-examination then turned to the evidence of P.C. Moclair and I quote:—

(*Vol. VII p. 484 line 23 – p. 485 line 45*)

“Q. All right. Now, let us deal with the evidence as to the conversation with P.C. Moclair.

P.C. Moclair's evidence was that as you were going down the corridor, that you spoke to him and said, 'She is cute. Is she really a policewoman?' or words to that effect, and that 'She ought to be promoted'.

You, on the contrary, say, well, you said, she is sharp, but indicating that that was meant in a derogatory way, and you deny any reference to saying she should be promoted. Correct? A. I used the words 'She is a sharp P.W.' in a derogatory sense, and as far as the, your question is, is given to me in that sense, I said that the rest of the evidence given by P.C. Moclair is either, it has to be a lie, it may be a matter of mistake with him, it may not be a matter of a lie with him, but—

Q. Oh, but yesterday you said it is pure fabrication? A. It is a fabrication, it must be a fabrication, because the only words I addressed to P.C. Moclair were, 'She is a sharp P.W.' and I used those words in a derogatory sense—

Q. Mm'hmm— A. —and the English, and the tone was quite clear.

Q. Well, again, I say that is a direct conflict. He says that you spoke to her (sic) and said words to the effect, 'Boy, she is cute. Is she really a policewoman? She should be promoted.'

You, on the contrary, said, 'She is sharp', meaning in a derogatory way? A. We have been through that before. I stated—

THE COMMISSIONER: Please, Judge Kurata, I will not have you arguing with counsel. Just answer the question. A. Well, my Lord, he is not using the language that I use, and it is difficult to answer the questions when he uses language that I do not use.

THE COMMISSIONER: Well, it is particularly difficult when you interrupt right in the middle—

THE WITNESS: I am sorry, my Lord.

MR. FORD: Q. I was trying to assist you, witness, by indicating the obvious, that in this part of the episode, conversation with Moclair, there again is a straight, direct conflict between your evidence and his? A. That is—

Q. There is no question about that? A. There is no question about that, Mr. Ford.

Q. All right. Thank you. Then there is no question that in your view it is a complete fabrication, as you said yesterday, or pure fabrication insofar as he is concerned? A. That is correct, Mr. Ford.

Q. And that he also is lying and perjuring himself as far as you are concerned in this regard? A. That is correct.

Q. I see. And are you suggesting that the, that—What is the motive as far as he is concerned? What reason would he have?

This is an officer of many years' standing, whose character isn't put in question at all. What possible reason would he have for coming here and giving perjured evidence against you? Do you know of any reason? **A.** For the same reason that I have indicated in response to your question in regard to P.W. Watson, that is, part of conspiracy—

Q. He is part of a conspiracy—? **A.** It is the only reason I could conjecture, either that, and he is mistaken and not a member of a conspiracy—"

Judge Kurata's attention is then drawn to the statement of P.C. Moclair that on the 15th. November 1968 Judge Kurata invited him to lunch, having given this testimony before the Judicial Council and in addition P.C. Moclair had testified on this inquiry that Judge Kurata had invited not only Moclair but three other police officers to lunch and that they had accepted and been his guests at some time in 1966. I quote the evidence on this point as follows:—

(*Vol. VII p. 486 line 18 — p. 487 line 29*)

"**Q.** I have a few other questions about the conversation with P.C. Moclair.

You recall, of course, that there is evidence here as to an alleged conversation about, between you and Moclair, about lunch.

P.C. Moclair says you invited him to lunch and that he had lunch with you before. Is that correct? **A.** I did not ask him to lunch on the 15th November—

Q. Just a minute. I said you recall that P.C. Moclair said that he had, that you invited him to lunch—his evidence—and that he had, in fact, had lunch with you before? **A.** That is two questions—

THE COMMISSIONER: No, it is not two questions. The question is: 'Do you recall him saying that?'

THE WITNESS: I recall him saying that.

THE COMMISSIONER: All right, that is the question.

MR. FORD: **Q.** And your evidence, I take it, is that you deny that you invited him to lunch but you are a little, perhaps, I take it, now, vague as to whether you had lunch with him before? Is that correct? **A.** I deny that I asked him to lunch on the 15th of November.

My recollection as far as the statement that I, we had lunch before, could be correct.

Q. I see. **A.** I have no recollection whatsoever of having lunch with P.C. Moclair before.

Q. I beg your pardon? A. It is possible—

Q. It is possible now.

Now, do you remember giving evidence at the Judicial Council in December, on this point, do you remember being asked these questions and giving these answers?

THE COMMISSIONER: Page, please?

MR. FORD: At page, my Lord, 104, at line 44—

Q. —where the question is asked:

'Q. Moclair said you asked him to lunch. You deny that?

A. I deny I ever took Moclair or any other police officer—

Q. Do you deny you asked him that day? A. I deny I asked him to lunch'

Now, I take it you still deny that you had asked him to lunch that day, but you say it is possible you may have had lunch with him before? A. Mr. Ford, I have denied I asked him to lunch on the 15th of November."

Judge Kurata tried to blame what was untrue with reference to the October 1966 luncheon on faulty memory, at the same time acknowledging through his counsel that he had in fact lunched with Moclair and the three others at that time.

(See Transcript Vol. III, p. 180 lines 9-21)

"THE COMMISSIONER: You have no other evidence to tender today?

MR. FORD: Well, no, my Lord, with the exception I am informed of a witness who otherwise might have been called in reply, but if my friends have no objection he could be called, the witness Fitzgerald, as to having lunch with Magistrate Kurata.

MR. MALONEY: There is no dispute as to that at all. Judge Kurata has no recollection of the luncheon, but could not possibly think of denying the recollection of the officer."

He steadfastly maintained his denial of asking P.C. Moclair to lunch on the 15th November, 1968 as Moclair swears he did.

His denial was as emphatic as to absolutely leave no room for equivocation and was broad enough to cover the 1966 episode as appears from further passages from the transcript of evidence before the Judicial Council which were put to him.

(Vol. VII p. 488 lines 14-34)

"MR. FORD: Well, I propose starting at line 27, approximately:

'THE CHAIRMAN: Q. Have you ever invited Moclair out to lunch? A. I have never invited Police Constable Moclair to lunch on any occasion whatsoever.

CHIEF JUDGE ANDREWS: Q. Have you ever had lunch with him? A. I have never had lunch with him to the best of my recollection. I know I have never had lunch with him within my memory.'

THE COMMISSIONER: 'Within my memory.'

THE WITNESS: Correct. That is a correct statement of the—

MR. FORD: So—

THE WITNESS: —transcript—"

Next, he was referred to the evidence of P.W. Barron who has sworn that when she answered P.W. Watson's call and went to the Old City Hall they couldn't talk because Judge Kurata was hovering around all the time. This is what he says about her evidence.

(*Vol VII p. 498 lines 3-26*)

"Q. Your evidence is that you didn't see Policewoman Barron at all? A. I never saw Policewoman Barron before the Judicial Council hearing in December.

Q. I see. And didn't see any policewoman. In fact, you say there wasn't any policewoman with her when you saw her in the hall either before 1.00 o'clock or later that day? A. Well, I was not in the hall at 1.00 o'clock, I had gone down to the library. I was in the hall at 2.00, very close to 2.00 p.m. on the afternoon of November 15th, and at that time I saw P.W. Watson with Constable Creighton.

Q. Well, just a minute. Well, you weren't there at all, you say, in the hall when P.W. Barron says that she was with P.W. Watson and saw you? A. That is correct. I was not there after—after 12.45 I was in the library on the main floor.

Q. So P.W. Barron is also, I take it, fabricating that evidence about seeing you? A. Well, the only conclusion I can come to is that it's fabrication because I'd never seen P.W. Barron in my life before the time I saw her at the Judicial Council hearing.

Q. You say she is also lying in that particular? A. That would be correct. That is correct."

Finally, I asked Judge Kurata to crystallize his position and the following appears in the transcript:—

(*Vol. VII p. 500 lines 1-27*)

"THE COMMISSIONER: Q. Judge Kurata, I want to clear something up with you. You have put this matter in this context, that Policewoman Watson is a perjured liar, and I don't care about the reasons that you say that— A. I understand.

Q. —because none of us can get into the other person's mind. But you say that she's a perjured liar, and you say that Police Constable Moclair is a perjured liar, you say that Police-woman Barron is a perjured liar in this courtroom. Now, may I take it from you that these members of the Metropolitan Police Force are equally laying their lives on the line with yourself?

A. Well, that's the only assumption I can make, my Lord, because I have denied the truth of the evidence of P.W. Watson, P.W. Barron—

Q. I must find either that you are not telling the truth, in which case your position is finished, or I must find that three members of the Police Force, in the context you put it to me, are perjured liars and hence are of no further use to the Police Force in Toronto?

A. That's correct.

MR. MALONEY: No, sir, with great respect, there is a third possibility. I submit that you can't make up your mind at all in view of the conflict—

THE COMMISSIONER: Then they all ought to go in that case."

Finally, Judge Kurata testified both before the Judicial Council and myself that his association with the police force was always good, except for two unidentified members of the morality squad who thought he was soft on prostitutes and pimps, but that he could think of no reason whatever why P.C. Moclair would give evidence against him or indeed P.W. Barron for that matter.

I think the foregoing is a fair summary of his evidence. It is hard to quote verbatim because he was constantly sparring, quibbling and arguing with commission counsel and had to be stopped by myself on more than one occasion.

Conclusions on the Evidence with respect to the Allegations of Kathleen Lonsberry as to the events of the 1st. November 1968 and of Policewoman Marlene Watson as to the events of the 15th. November 1968.

These allegations must be dealt with together because, as Judge Kurata himself said, they are, in essence, identical, and perhaps of some significance they occurred in startlingly similar circumstances within a fortnight.

Apart from the detail of overtacts of indecency or indecent assault, the real essence of the accusations of these two women against Judge Kurata is that, having got them privately into his

chambers on the second floor of the Old City Hall, while they were waiting, in civilian dress, to appear in Court Room 33, the women's court, he, Judge Kurata believing each of them to be known prostitutes, made a proposal of sexual activity to them for his gratification, to be paid for by him, in the form of a favour which he, as a magistrate, could bring about, namely, escape from confinement to prison by the imposition of a suspended sentence. No accusation could possibly be made which would strike so directly at the integrity which one holding judicial office must uphold and defend at all times.

There is a well-known rule of evidence which is one of the exceptions to the basic rules that restricts evidence of bad character inferred from prior convictions and the like, to the issue of credibility of the witness namely where such evidence goes to show a pattern of very identifiable conduct. In such circumstances, evidence of similar acts becomes admissible to prove that the accused person is actually guilty of that of which he is accused. (See Cross on Evidence, 3rd. Ed., Chapter 14, commencing at p. 292 and dealing with the rule stemming from Lord Herschell L.C.'s statement in *Makin v. A.G. for New South Wales*, [1894] A.C. 57 at p. 65.)

Here before me are two women, one of unblemished character, married, young, a respected member of the Metropolitan Police Force, engaged in the protection of women and children from assault, indecent and otherwise, whose evidence with respect to matters which she has observed in the course of carrying out her duties is regularly accepted in courts such as those over which Judge Kurata presides and I presume elsewhere. And the other woman, young, not unattractive but with a record of convictions for prostitution and other decidedly anti-social acts which would, of necessity, make her testimony subject to the most careful scrutiny.

If the evidence of the policewoman commands belief then it must be taken into consideration when assessing the credibility of the prostitute, since it is basic to the accusation of each that Judge Kurata did what he is alleged to have done, believing them both to be prostitutes awaiting trial, conviction and sentence. He was certainly right in the one case and disastrously wrong in the other.

Let me then deal first with the accusation of Mrs. Lonsberry against Judge Kurata with respect to his actions on the 1st. November 1968. Her demeanour in the witness box, as I have already

noted in quoting her cross-examination, was that of a truthful witness being tested to the limit of human endurance. Every unsavoury aspect of her past history known to counsel for Judge Kurata was thrown at her and she was not shaken one iota.

Judge Kurata, on the other hand, says he never saw her in his life before, and that this is a trumped up lying attack designed to destroy him, possibly to achieve some notoriety for Mrs. Lonsberry. His counsel says it was put forward by unknown members of the Metropolitan Toronto Police Force, intent on destroying his client.

The ineffable Mr. Cugelman, a young lawyer apparently practising in the criminal courts of Toronto, was tendered as a witness on behalf of Judge Kurata to prove that Mrs. Lonsberry could not possibly have been in Judge Kurata's chambers, when she alleges she was on the morning of the 1st. November 1968, because she was in his sight at all possible times. I regard his evidence as having no value whatever to me in resolving these matters. It is impossible for either Mr. Cugelman or Mrs. Lonsberry to be precisely accurate as to when each saw the other, if they did at all.

In connection with the powers of witnesses to recall details of time, sequence of activities and so on, one has only to look at the evidence of the witnesses dealing with the events at the Kurata house on the 1st. September 1968, a day they have every reason to recall forever, to understand what I mean by the foregoing statement with respect to Mr. Cugelman. The evidence of the people at the Kurata house on that day contains the most glaring discrepancies. For instance, with reference to that day Mrs. Kurata thought they had lunch in the garden, Judge Kurata says no lunch. Mrs. Morgan says two telephone calls were made by Judge Kurata for pills—Judge Kurata only recalls one. Those are sufficient illustrations, I am sure, to make my point but an analysis of the evidence of other people on that day, of course, would disclose many more. Perhaps I should mention one, Mrs. Kurata was positive that she was in the room at the time her husband took the pills and liquor and when their son, Lucien Jr., came in to the room that she was there with her husband. The son says absolutely no. I have no doubt that with respect to this last mentioned point both Mrs. Kurata and Lucien Jr. were doing their best to recall precisely accurately the events at that particular time of day on the 1st. September 1968 and yet they are hopelessly contradictory.

Mr. Cugelman putting his evidence at its highest starts out by saying that he was introduced to Mrs. Lonsberry at about 20 minutes to 10:00 a.m. on the 1st. November 1968 and that from that time until shortly before 10:00 a.m. she was composed and gave no evidence of having been through the emotional shocking experience to her being "propositioned" by a magistrate. He agrees that the introduction to her took place outside Court Room #33 where she says she was. That invites me to make the inference that, having regard to the time factor, i.e., when he was introduced to her and when Court 33 was due to open (He can't say when it opened because he wasn't there) it was impossible for her to have been in Judge Kurata's chambers as she says.

One would take his evidence a little more seriously if counsel for Judge Kurata, knowing what this man was prepared to say, had challenged Mrs. Lonsberry with even a part of it,—namely, by asking her if she remembered Mr. Cugelman being introduced to her and having him stand up for identification. Counsel's failure to do this was unfair and as for Mr. Cugelman, his demeanour and deportment in the witness box did nothing to enhance my opinion of his veracity.

This is a public inquiry. His duty was to inform commission counsel as well as Judge Kurata's counsel if he had anything to say that would assist me one way or the other in coming to a conclusion with respect to the matters referred to me by the Lieutenant Governor in Council. This was not a case of someone being defended in "Police Court" where the issues are so vastly different.

He so completely failed to understand his duty and responsibility that he even declined to disclose the nature of his evidence to commission counsel until he had asked permission from those representing Judge Kurata. I should mention that it was Mr. Ecclestone whom he asked and who immediately instructed him to communicate fully with commission counsel.

I do not applaud him for public spiritedness as I was invited to do.

Reverting to the failure of counsel who called Mr. Cugelman to put some questions to Mrs. Lonsberry on the subject of what Cugelman was going to say while he had her under cross-examination, I should also mention that not only did he fail to do this but knowing that this evidence was coming permitted Mrs. Lonsberry to be released from attendance as a witness.

I do believe Cugelman when he says he was outside Court Room 33 before that Court opened on the 1st. November 1968:

it is possible but immaterial that he was introduced to Mrs. Lonsberry but his evidence, intended to destroy Mrs. Lonsberry's, has no such effect.

One's veracity is not established or guaranteed by one's station in life.

In the case of the Rt. Honourable John Profumo and Christine Keeler, which was the subject of an inquiry at the direction of the Prime Minister of Great Britain, by Lord Denning, now Master of the Rolls, in 1963, the confessed liar was the senior and distinguished Cabinet Minister, Profumo. Christine Keeler, the prostitute and drug addict, told the truth, as Lord Denning found.

In the case of the Honourable Pierre Sevigny the Cabinet Minister was not believed with respect to the extent of his relationship with Gerda Munsinger, a known prostitute, drug addict and espionage agent, by the Honourable Mr. Justice Spence of the Supreme Court of Canada, following a recent public inquiry.

Take another case, that of the Honourable L. A. Landreville whose conduct was the subject of a public inquiry by the late the Honourable Ivan C. Rand. The Commissioner was convinced beyond doubt that the Honourable L. A. Landreville had been guilty of half-truths while under oath, that his testimony was untrustworthy and as a result reported him unfit to continue as a Judge of the Supreme Court of Ontario.

Now consider Mrs. Lonsberry's position on the 1st. November 1968. She is about to be convicted and sentenced by Judge Bolsby. She already has an extensive record of convictions. If her story is true, even to the extent of being in Judge Kurata's chambers that morning, who would believe her unsupported accusation in the face of a denial by Judge Kurata that she had been in his room. On this inquiry that denial was made and as noted went even further as he said he had never seen her in his life until she appeared on the inquiry.

In these circumstances it comes as no surprise to me that she made no comment to Detective Getty's partner that morning, in fact I would have been astonished if she had done so.

Now I must consider the situation in late January 1969 described by Detective Rennie. Mrs. Lonsberry had been in the Reformatory from the 1st. November 1968 until the 28th. December 1968.

In a routine but casual check on her, Judge Kurata's name came up. No one knows in what context or who first referred to him. She gave no details of why she made the outburst that there

can be no doubt she made to the effect that she would rather go to jail than be touched by him.

Neither she nor the two probationary detectives had any inkling that Judge Kurata's conduct had been the subject of an in camera private inquiry by the Judicial Council only a few weeks before on the complaint of Policewoman Watson as to similar actions. As far as she and the detectives were concerned, Judge Kurata was a respected magistrate, secure in his position in society and office and she, a poor convicted prostitute. Moreover, Judge Kurata was one of the few magistrates she didn't know by reason of any Court appearance. He had never convicted her or sentenced her to punishment. On the face of it he was a stranger to her and there was no apparent reason for her animosity directed specifically and by name against him.

And yet under these circumstances, apparently out of the blue, she said to these detectives that he had "propositioned" her and that she would rather go to jail than let him touch her—describing him in graphic language.

Her complaint meant nothing to the detectives, they dismissed it from their minds but remembered it when they and all officers of the Morality Bureau dealing with prostitutes, were asked by their superior officer if any of them had ever heard a complaint from a prostitute such as that made by Policewoman Watson.

This inquiry was made at the beginning of March 1969, after the public inquiry into Judge Kurata's conduct had been announced.

Detectives Rennie and Renn reported Mrs. Lonsberry's statement to them and other senior officers then investigated it. She was carefully interviewed by commission counsel before being tendered as a witness. She was, of course, not called to give evidence until counsel for Judge Kurata had had full opportunity to consider her evidence with their client and prepare for cross-examination.

Counsel for Judge Kurata condemned the police publicly, in his summation to me for "going to the bottom of the barrel", i.e., interviewing a prostitute, to discover if there was further evidence damaging to Judge Kurata, in what I can only describe as language, which had it been used in a jury trial would be objectionable as inflammatory.

When one is accused as Judge Kurata was by Policewoman Watson, of making a dreadful proposal to her, believing her to be a prostitute, and referring to some other girl down the hall and

that "he had arranged for her to get a suspended sentence," the sphere of places of inquiry is clearly defined. Her accusation, which Judge Kurata had had in writing since the 25th. November 1968 and which was entered as Exhibit 5, contained the further specific accusation "I got the inference that if I had been a prostitute he would have arranged for a suspended sentence for me too."

It is true, as is recorded in the transcript, that F. W. Callaghan, Q.C., Senior Crown Counsel, who appeared for the Attorney General before the Judicial Council on the 23rd. December 1968, stated, with reference to Policewoman Watson's report of the 15th. November 1968 in which she quotes P.C. Moclair, to whom she first complained, as saying "that he had heard that this was usual behaviour by the Magistrate, that it was common knowledge," that an investigation prior to the 23rd. December 1968 made on his instructions had failed to produce evidence of any incident involving a prostitute and Judge Kurata.

Mrs. Lonsberry was not interviewed at that time, she was in the Mercer Reformatory. She did not make a complaint about Judge Kurata until the end of January 1969 in the circumstances already discussed, and it was not discovered that she had made a complaint to any one until a proper recheck was made with all officers of the Morality Bureau in early March 1969.

Far from being subject to criticism for rechecking, the police would have been derelict in their duty had a recheck not been made. You would have heard no complaint from Judge Kurata's counsel if the recheck had failed again to produce any evidence in support of what Constable Moclair described as "unusual behaviour by the magistrate, that it was common knowledge."

When the accusation is of improper conduct with prostitutes, where do you go except to those whose life in the course of duty brings them regularly into contact with prostitutes? You do exactly what the senior police officers did, you inquire first of their police officers, who in the course of their police duty have regular and constant contact with prostitutes.

I now set out my conclusions with respect to the incident involving P.W. Watson. It was her complaint of the 15th. November 1968 to her inspector Alexander, that was transmitted no doubt through the usual channels to Chief of Police Mackey, by him to Chief Magistrate for Ontario, as he then was, namely, Arthur O. Klein, Q.C., and by Chief Magistrate Klein to Judge

Kurata with his covering letter of 25th. November 1968 that triggered the chain of events that led to this public inquiry.

There was no other complaint against him at this time as far as he knew. The alleged attempted suicide was three months in the past. One must ask one's self why, then, if this was a vicious fabrication or conspiracy, as Judge Kurata alleges, wouldn't an innocent man, falsely and grievously accused, go at once to the Chief Magistrate under whom he served and say so. It would have been so easy and natural to have Chief Mackey, Inspector Alexander, P.W. Watson, P.W. Barron and P.C. Moclair all in singly or together and get this matter straightened out privately. Chief Magistrate Klein would be that kind of innocent man's most effective and redoubtable ally.

But, no, the answer that Chief Magistrate Klein got was a letter of denial coupled with a demand that Magistrate Kurata be charged in a public criminal court.

For an innocent man, such a course of action would be nothing short of disastrous. True he might have been found not guilty, but immense damage would have been done to him and his reputation, to the Magistracy generally, of whom we are and ought to be proud, to the police force of whom we are and ought to be proud, and particularly when such a public hearing in a criminal court would have followed so soon after the inquiry which the Honourable Mr. Justice Campbell Grant had to conduct with respect to two other York County Magistrates in July and August of 1968.

The acquittal which he might have secured with respect to any criminal charge could not have freed him from suspicion of guilt or doubt as to his fitness to be a magistrate and would at the same time have cast a grave cloud of suspicion on the integrity and probity of the police force.

Judge Kurata's usefulness as a magistrate would, of necessity, have been at an end and so would the usefulness of Policewoman Watson, Policewoman Barron and Police Constable Moclair, all of whom would have had to resign or be dismissed as untrustworthy.

However, this inevitably disastrous course was not adopted by the Attorney General for Ontario who did exactly what the Legislature intended him to do under the Provincial Courts Act, 1968, namely, refer the complaint to the newly formed Judicial Council of Ontario of which Chief Magistrate Klein is one of the members

and which is otherwise composed, as I have pointed out earlier, of the Chief Justice of Ontario, the Chief Justice of the High Court, the Chief Judge of the Provincial Courts (Family Division) and the Treasurer of the Law Society.

This was the course that one would have expected an innocent person in Judge Kurata's position to have demanded and welcomed if the matter couldn't be resolved in Chief Magistrate Klein's office. A private inquiry before five of the most responsible judicial and legal officers of the Province is designed specifically to save Provincial Judges from public inquiries, if the complaints are frivolous and vexatious. If the matter is still one of serious doubt then the statute provides that there be a public inquiry before a Commissioner who has power to subpoena witnesses and to force production of documents and, of course, as the statute requires to give the unfortunate Provincial Judge every opportunity to be represented by counsel, to cross-examine witnesses and to call witnesses on his own behalf.

The great difference, of course, between this procedure and that of a criminal trial is that the Commissioner can do what a judge and jury are in no way called upon to do and cannot do namely the Commissioner can exonerate and vindicate if the evidence so justifies and do so without reservation.

The judge and jury in a criminal trial discharge their duty by bringing in a verdict of guilty or not guilty and the not guilty verdict is no exoneration or vindication whatever. It merely says that it hasn't been proven against you and you don't go to jail.

I would not have spent any more time on this aspect of the matter if counsel for Judge Kurata had not introduced at the very opening of his examination of his client the correspondence between Chief Magistrate Klein and Judge Kurata and the gratuitous letter addressed to the Attorney General under date of the 3rd. December 1968. This correspondence has been quoted in full in this report. The same point of view, namely, a demand for trial in the criminal courts, received wide publicity in the press.

If not dealt with it could easily leave many people misled. It has been coupled with a barrage of publicity that this was a silly, trivial matter involving whether or not Judge Kurata committed an alleged indecent assault on Policewoman Watson by touching or resting his hand on her bosom or attempting to undo her coat buttons.

This was not and never has been the basis of her complaint or

the gravamen of the incident I was directed, *inter alia*, to inquire into despite every effort to make it appear so.

There is not one reference to this in Chief of Police Mackey's letter of 22nd. November 1968 which necessitated the whole business being inquired into by some authority. He says in language that is clear and unmistakable and I quote:—

“This incident itself was distressing enough to the policewoman concerned, but I think the implied interference with the course of justice on the part of the magistrate is a serious matter.

Recently Attorney General Wishart called me to his office on matters relating to Magistrate Kurata, and I would suggest that he be informed of this situation.”

It has been necessary to repeatedly refer to the fact that the Letters Patent commissioning this inquiry make no reference or suggestion of an indecent assault and, indeed, it really does not concern me.

The real and very grave complaint, made in this matter was *that, and let there be no mistake about it, Provincial Judge Kurata sought sexual gratification from women who were, or whom he believed to be common prostitutes, in return for his influence to pervert the course of justice by relief from punishment and further that he did so believing himself to be safe from accusation because such women would never be heard to complain about the conduct of a person in his position if it was his word against theirs.*

Now having got the history and the issues clear, what is Judge Kurata's answer to the evidence of Policewoman Watson? His answer is, except for her testimony that she was in his office when she says she was, that she is a perjured liar; either trying to protect herself from some complaint that she feared he might make against her or part of a vague conspiracy by some unidentified members of the police force to destroy him because they did not like his decisions.

One is immediately curious as to why he admits that she was in his office when he traduces not only everything else she says, but everything incriminating that P.C. Moclair and Policewoman Barron say with respect to that morning of the 15th. November 1968.

The answer is obvious. Policewoman Watson was seen by P.C. Moclair coming out of Judge Kurata's office with him after her and he couldn't deny her presence there.

Not being able to deny it he has to explain it. What is his explanation? It is that she asked to speak to him, a person who was an identifiable magistrate because of the robes he was wearing but otherwise a total stranger to her to ask him what kind of a magistrate Magistrate Bolsby was. Her only relationship with Magistrate Bolsby that morning was as a police witness in a case involving some person involved in an offence. She had appeared before him on a number of occasions before in the course of her duty. Why would she possibly be interested in a strange magistrate's views? This is such a preposterous, ridiculous explanation for her presence in Judge Kurata's chambers that absolutely no further time or space should be devoted to it.

That leaves me with only Policewoman Watson's statement as to how she came to be in Judge Kurata's chambers and that is that he took her by the hand, led her down there saying he wanted to speak to her.

Both she and he say he asked her name and she said P.W. Watson. He now says that he realized that she was a policewoman at once. I don't believe it.

He doesn't say that she wanted to speak to him privately. If he thought she was a policewoman, why wouldn't he ask her, if one accepted his version, which I don't, what do you want to speak to me about and do so in the public corridor? He had no hesitation according to his evidence to stop and pass the time of day in the public corridor with P.C. Moclair, with representatives of the press and others. Why take her all the way down to his office to find out and lock the door? Both of the people involved were on official duty and strangers to each other. His explanation is sheer nonsense.

I have no doubt at all that it first dawned on Judge Kurata that he had made a disastrous mistake and that he had lured a policewoman into his chambers when she told him that he had confused her status and that she was a policewoman.

He was obviously so startled and frightened about this that he couldn't let her go out of his office alone, he must go back and speak to his luncheon friend Moclair to find out if she really was a policewoman. To his horror Moclair confirmed it. Moclair said his actual words were "She's cute. Is she really a policewoman?" What a damning question.

There was now no chance of dealing with this woman as he has dealt with Kathy Lonsberry. In her case he simply said, "I

never saw her in my life before." There was no one to contradict him.

P.C. Moclair in his evidence before the Judicial Council testified among other things that Judge Kurata having spoken to him about the policewoman invited him to lunch on that day.

Not knowing about this allegation Judge Kurata denied before the Judicial Council that he had ever invited Moclair or any other police officer to lunch then or at any other time.

When he found on this inquiry that he was not only to be confronted by Moclair with this allegation but three other police officer witnesses who would testify that he had indeed entertained them at lunch on the 26th October 1966 his counsel on his behalf conceded the truth of what they were prepared to testify to.

He puts the lie to P.W. Barron who says she saw him hovering around the corridor when she responded to P.W. Watson's call for help and advice. Well, at this stage I suppose he might as well call everyone a perjured liar and he did. From this, he has never resiled.

Lastly, I must deal with his suggestion that he was the victim of a police conspiracy to destroy him. That statement alone would seem to me to impair his usefulness as a magistrate, called upon scores of times daily to decide cases in which police officers, male and female, are vital witnesses.

His counsel dealt with the matter this way in his summation:—

(Vol. IX, p. 672 lines 36-46 and p. 676 line 32 to p. 677 line 4)

"Some question came up about whether or not Judge Kurata should be condemned for suggesting a conspiracy to destroy him. I am not suggesting a conspiracy on the part of the police force, generally, for which I have great admiration, but I say to you, with great respect, some measure of proof of that theory is to be found in the evidence of that probationary detective, Rennie, when he describes the efforts made by that superior officer to get evidence of this kind against Judge Kurata, and they sunk right down to the bottom of the barrel when they came up with Mrs. Lonsberry.

It seems to me that we have to point out here that a lot of damage has been done to that structure by this case. A policeman has made an unsworn complaint in writing, alleging that Judge Kurata is guilty of two crimes. No charge was laid, but

after a process that has already been gone into, a public inquiry was ordered. This established a precedent, dangerous in the extreme for this reason: it means that all a police chief has to do to get rid of a Provincial Judge who doesn't suit him is to make a similar report to any other judge and if the judge does not have the intestinal fortitude to carry on and is fearful of the publicity that will surround him and his family in a public inquiry, he will resign no matter how innocent he may be; and in this way the police control the Bench, and this is a disaster because the policeman in such a system has lost his position of subservience and the judiciary has lost its independence. I don't want that kind of a society; nor does the public."

My only comment on these submissions are that the police never had a position of subserviency any more than any other members of the public. The policeman, trained and sworn to enforce the law, does his duty and when called upon gives evidence in Court just as any one else would do.

Nor has the judiciary, sworn to administer the law, any fear of losing its independence. It is well equipped to look after itself.

Submissions like these tend only to distract attention from the real issues.

Judge Kurata lost his credibility seriously when he denied having told Dr. Kyne that he attempted suicide as the doctor recorded him saying in his written and typed reports of the 3rd. September 1968.

His story with respect to the reason Policewoman Watson was in his room is childishly preposterous and not to be believed for one moment.

His explanations as to why she would accuse him are ridiculous. He has been forced to admit that he was quite wrong with respect to P.C. Moclair's evidence with respect to luncheons and invitations to luncheons.

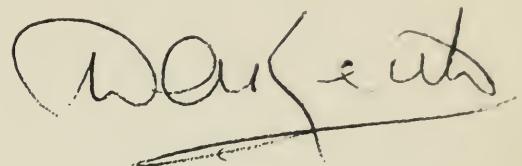
I am left in no doubt whatever that Judge Kurata

- (a) on the 1st. November 1968 beckoned Kathy Lonsberry into his office and proposed to her, believing her to be a defenceless prostitute, as she was, some sexual activity that would gratify him, in return for his influence, in her favour, in connection with charges pending against her;
- (b) on the 15th. November 1968, he invited Marlene Watson into his room believing her to be a prostitute awaiting trial for the same purpose and with the same promise; and
- (c) has testified falsely with respect to both incidents.

Finding

For the reasons set out in the foregoing report and the conclusions which I have arrived at, I FIND that Provincial Judge Kurata is by reason of his misbehaviour, unfit to serve as a judge, and hence is liable to 'be removed from office before attaining retirement age,' pursuant to the Provincial Courts Act, Statutes of Ontario 1968, Chapter 103, Section 4.

All of which is respectfully submitted.

A handwritten signature in black ink, appearing to read "W. A. Smith".

The Commissioner

Osgoode Hall,
Toronto,
April 24, 1969.

APPENDIX A

Staff of Commission

Gordon W. Ford, Q.C.
Robert G. Murray

Commission Counsel
Assistant Commission Counsel

Appearances

Arthur Maloney, Q.C.

Counsel for
Provincial Judge
Lucien Coe Kurata
with respect to all questions
except the question of
attempted suicide

Gordon W. Ecclestone, Q.C.

Counsel for
Provincial Judge
Lucien Coe Kurata
with respect to the question
of attempted suicide

APPENDIX B

Hearings

Public hearings were held at the Municipality of Metropolitan Toronto Court House on the 18th, 19th, 20th, 24th, 25th, 26th, 27th and 28th days of March 1969 and on the 2nd. day of April 1969.

APPENDIX C

Witnesses called are listed below:—

Barbara O'Neill
P.W. Marlene Watson
P.C. Thomas Anthony Moclair
P.W. Joan Elizabeth Barron
Mary Ferguson
William Burrows
Henry Wallace Nachuk
Brian Stephen Lyons
Sister Mary Janet
(Elaine Murray)
Muriel Caroline Morgan
Dr. Edwin Laurane Dennison
Morgan

Dr. Hazel Lavina Agnes Lickley
Dr. David O'Brian Levy
Dr. Veronica Halmos
Dr. William Peter Kyne
Mary Rose Kathleen Lonsberry
P.C. Alexander Morrison Rennie
Provincial Judge
Lucien Coe Kurata
Mary Frances Kurata
Bernard Cugelman
Joseph Lucien Anthony Kurata

APPENDIX D

List of Exhibits

| <i>Ex.</i> | | <i>Ex.</i> | |
|------------|---|------------|--|
| <i>No.</i> | <i>Description</i> | <i>No.</i> | <i>Description</i> |
| 1. | Letters Patent | 3-E | Photograph of washroom as taken from hallway running east and west outside of Judge's office |
| 2. | Medical records. His Honour Judge Lucien Coe Kurata, St. Joseph's Hospital | 3-F | Photograph of Judge's washroom and part of office, facing north |
| 2-A | 6th page of hospital records, being admission sheet dated September 1, 1968 | 3-G | Interior hallway, close-up, facing east |
| 2-B | Report of Dr. Kyne, originally part of Exhibit 2 | 3-H | Photograph of Judge's desk and buildings as seen through windows in office |
| 2-C | Progress notes of Dr. Levy | 3-I | Photograph of Judge's office, facing south with door closed |
| 2-D | Report of Dr. Kyne, originally part of Exhibit 2 | 3-J | Photograph of Judge's office, facing north |
| 2-E | Consultation report, dated September 3rd, 1968, signed W. Kyne M.D. | 3-K | Photograph of outside of courtroom 33, facing northwest |
| 2-F | Laboratory test forms | 3-L | Close-up photograph of door of Judge Kurata's office, from inside, facing south, showing lock on door |
| 2-G | Sheet head "Nurse's Record" | 3-M | Photograph of courtroom 33 doors, taken facing west |
| 2-H | Final note | 3-N | Close-up photograph of courtroom 33 doors |
| 2-I | Final diagnosis | 3-O | Photograph of Judge Kurata's office, facing north, taken from hallway outside of office |
| 3-A | Photograph of hallway outside courtroom No. 33, facing north | 3-P | Photograph of part of north corridor of Old City Hall, east to west, also showing entrance to courtroom 33 |
| 3-B | Photograph of hallway, running east and west, between courtrooms No. 33 and No. 34, Old City Hall | | |
| 3-C | Photograph of washroom in Judge Kurata's office at Old City Hall | | |
| 3-D | Photograph of washroom door and doors of Judge Kurata's office, closed, taken from interior of office | | |

| <i>Ex.</i> <i>No.</i> | <i>Description</i> | <i>Ex.</i> <i>No.</i> | <i>Description</i> |
|--------------------------|--|--------------------------|---|
| 3-Q | Photograph of Judge Kurata's office taken from south of Judge's desk looking north, showing, through windows, Eaton's Annex on Albert Street | | Woman's Bureau, Police Headquarters |
| 3-R | Photograph taken from Judge Kurata's office looking through windows showing windows in Eaton's Annex | 7. | Scaled floor plan of residence at 27 Grenadier Heights, Toronto |
| 3-S | Photograph taken from Judge Kurata's office, north of desk, looking out windows | 8. | Ambulance report, dated September 1, 1968 |
| 3-T | Photograph taken from inside Judge Kurata's office, near window sill on north wall, showing windows | 9. | Sample box |
| 4. | Scale drawing of second floor of Old City Hall | 10. | Criminal record |
| 5. | Copy of report of Marlene Watson to Fern Alexander, Inspector, Youth Bureau, dated November 15, 1968 | 11. | Letter of November 25, 1968, from Chief Magistrate Arthur O. Klein |
| 6. | Metropolitan Toronto police form, report from P.C. Moclair #52 Plainclothes Unit, November 15, 1968, to Inspector Alexander, | 12. | Copy of letter dated November 22, 1968, from Chief of Police J. Mackey |
| | | 13. | Copy of letter of November 28, 1968, from Magistrate Kurata to Chief Magistrate Arthur O. Klein, Q.C. |
| | | 14. | Copy of letter of December 3, 1968, from Provincial Judge Lucien Kurata, Q.C., to the Minister of Justice and Attorney General of Ontario |
| | | 15. | Bulletin—Japanese Canadian Cultural Centre |
| | | 16. | Picture of bedroom |
| | | 17. | Photograph of bedroom |
| | | 18. | Photograph of bedroom |

